

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Tuesday, 7 December 2010
10 The hearing starts at 9.06 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 The accused persons are present in the courtroom. Fine.
16 Before we resume from where we left off yesterday, the Chamber
17 would like to respond to a filing put in by the Defence team of
18 Germain Katanga related to allegations made by Witness 0233 on the
19 possibility raised a few months ago that there are certain victims
20 existing who may not have come from Bogoro.
21 The Chamber has taken good note of the observations that the
22 Defence team of Germain Katanga filed on 23 November 2010 relative to
23 allegations made by Witness 0233. This filing number 2562, entitled
24 "Defence observations on the filings relative to Witness P-0233 notified
25 on 1st of November, 2010."

1 The Chamber notes that the Defence is requesting that an in-depth
2 investigation on allegations that there are victims existing who indeed
3 do not have that status, that such an investigation be conducted
4 preferably by the Registry. It also notes that the Defence declares that
5 it reserves the right to have Witnesses 0166 and 0233 recalled on this
6 point at the end of the requested investigation.

7 The Chamber would like to recall that on 6 October 2010, it
8 outlined in the courtroom the various measures taken between the months
9 of June and September 2010 when it was informed of these allegations.
10 The Chamber would also like to recall that after reviewing the
11 information provided by the Registry and Mr. Luvengika, see reports of
12 the Registry number 2292 and 2366, it then concluded *inter alia* that it
13 was not necessary to give any further follow-up to the information
14 brought to its attention on the 29th of June, 2010.

15 The Chamber considers that the Defence did not, in its filing of
16 23 November 2010, provide any new material and the Chamber itself does
17 not have any information that could lead it to come back on the decision
18 which it rendered on 6 October 2010.

19 Of course it goes without saying that if the Registry or
20 Mr. Luvengika, the Legal Representative of the Victims concerned, and in
21 that capacity the party most directly affected, that if they collect any
22 new information, it shall be up to them to bring it to the attention of
23 the Chamber as soon as possible.

24 Yesterday, we adjourned after holding a discussion on the three
25 reports that the Prosecutor wished to have admitted into evidence. This

1 morning, you received an e-mail that was sent to the OTP, an e-mail
2 requesting the Prosecutor to kindly clarify to the Chamber the paragraphs
3 of that report which the OTP would like to rely on as evidence,
4 especially as this report dwells on events which do not strictly relate
5 to the events in this trial. And so the Chamber would like to underscore
6 that the paragraphs that the OTP's going to select should -- from the
7 contextual standpoint should focus on information or material which will
8 enable the Chamber to have a clearer understanding of the events. The
9 Prosecutor has stated that the OTP is going to prepare these paragraphs,
10 especially as these reports have been available to them and to the rest
11 of the parties for a long time.

12 After we listen to the reaction of the Prosecutor, the Chamber is
13 going to bring in Witness 0317 and put certain questions to that witness
14 in order to better understand the methodology that was followed by her
15 and her investigation team on the field when they met persons residing in
16 the DRC in the months of March and April 2003.

17 Prosecutor, you have the floor.

18 MR. O'SHEA: (* Previous translation continues) ...

19 Madam Prosecutor speaks. Just tidier if I mention it now.

20 Yesterday as we closed, I briefly made reference to two
21 decisions, one of the International Court of Justice. I want just for
22 the record give the proper reference. It's the case concerning armed
23 activities on the territory of the Congo, Democratic Republic of Congo
24 against Uganda, and it's the judgement of the 19th of December, 2005, and
25 the relevant paragraph is paragraph 159.

1 I state that simply to complete the record. Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

3 Thank you very much.

4 Madam Prosecutor.

5 MS. DARQUES-LANE: (Interpretation) Thank you, your Honour.

6 Good morning. Good morning, your Honours.

7 We indeed received the e-mail of the Chamber this morning. We

8 tried as best we could to select the paragraphs which can be admitted

9 into evidence.

10 First of all, the Prosecution would like to state that we do not

11 request the admission of the document DRC-OTP-02 -- let me cross-check

12 the reference again. That's right. 0202-0785. We do not request for

13 that document to be admitted into evidence.

14 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor,

15 that's very wise of you, and that's a judicious decision.

16 MS. DARQUES-LANE: (Interpretation) Now with respect to the

17 document DRC-OTP-0202-0286 (* as interpreted), we would request that --

18 that the summary that's on the first page and paragraphs 1 to 4, that is

19 the executive summary, and paragraphs 7 to 10, as well as paragraphs 1 to

20 13, and paragraph 46 to 48, 67 to 87. Could I have one moment,

21 your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) You may.

23 (Prosecution counsel confer)

24 MS. DARQUES-LANE: (Interpretation) That's all for this

25 document. I'll move on to the next public document.

1 PRESIDING JUDGE COTTE: (Interpretation) Yes, Professor Fofé.

2 MR. FOFÉ: (Interpretation) I beg your pardon. Just for

3 reference, I think I read in the transcript the reference

4 DRC-OTP-0202-0286. I believe that there's probably an error there.

5 PRESIDING JUDGE COTTE: (Interpretation) You are right. Thank

6 you, Professor Fofé. The reference is 0152-0286. Thank you for spotting

7 that error, which might have been corrected later on, but at least it

8 sets the record straight.

9 Prosecutor, we will move on to the third document, I suppose.

10 MS. DARQUES-LANE: (Interpretation) I will take the last

11 document, which is a public document, a document of the Security Council,

12 and we are requesting that paragraphs 1 to 34 be admitted into evidence,

13 as well as paragraphs 35 to 43 --

14 PRESIDING JUDGE COTTE: (Interpretation) Could you please tell

15 us, when you say 1 to 34, are you -- do you mean 1 to 34 inclusive of

16 paragraph 34? Because if you do not state that 34 is inclusive, then we

17 will consider paragraphs 1 to 33. You just said paragraph 1 to 34, and

18 35 to 43.

19 MS. DARQUES-LANE: (Interpretation) Thirty-four is included.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So it's

21 1 to 34.

22 MS. DARQUES-LANE: (Interpretation) We also have paragraph 64 to

23 67, and paragraphs 71 and 72, and paragraphs 38 to 43.

24 PRESIDING JUDGE COTTE: (Interpretation) Does this mean that you

25 are going back or not? I think that 38 and 43 are already included.

1 MS. DARQUES-LANE: (Interpretation) I meant paragraph 138.

2 Paragraphs 138 to 143.

3 PRESIDING JUDGE COTTE: (Interpretation) Yes, paragraphs 138 to

4 143.

5 MS. DARQUES-LANE: (Interpretation) 146 and 147.

6 PRESIDING JUDGE COTTE: (Interpretation) 146 to 147. Thank you.

7 MS. DARQUES-LANE: (Interpretation) 149 and 150. And that is

8 all.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

10 Court Officer, could you please bring in the witness.

11 Yes, Professor Fofé.

12 MR. FOFÉ: (Interpretation) I beg your pardon, your Honour.

13 Since we are a bit taken unawares, before we bring the witness into the

14 courtroom, wouldn't it be appropriate for the Prosecutor to indicate to

15 the Chamber the relevant information, the relevant new information in

16 this case, which is found in the various paragraphs she has highlighted,

17 information which the Chamber does not yet have at its disposal? There

18 you have it.

19 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you

20 must have understood that the objective of the Chamber, after listening

21 to all the parties yesterday, is to strive to focus on what would

22 constitute the objective of the cross-examination of the Defence teams.

23 Our other objective is to determine, through the paragraphs selected in

24 these report, the probative value that could be attributed to the

25 excerpts selected.

1 The Chamber expressly requested the OTP this morning to select
2 these paragraphs, ensuring that the information contained in such
3 paragraphs is indispensable, indispensable in the sense that it will
4 enable us to better understand the case and to better establish the
5 truth. If we give the floor to the OTP to react on this now, they would
6 say they have done this in compliance with the instructions of the
7 Chamber.

8 We would like to say that these reports have been at the disposal
9 of the OTP and Defence teams for a very long time, and this very rapid
10 exercise was done on the basis of the documents that the OTP had at its
11 disposal. We cannot, therefore, ask them now to indicate the material
12 which is indispensable in the various paragraphs. We believe that the
13 most important thing is for you to have a working document, a working
14 document which is a little more restrictive than the documents which the
15 OTP was proposing to admit into evidence in its entirety yesterday.

16 Prosecutor, you have something to say in response to what
17 Professor Fofé said?

18 MS. DARQUES-LANE: (Interpretation) The first thing I would like
19 to say is that the Chamber will be able to determine the new material or
20 any other information that would supplement the information that is at
21 the disposal of the Chamber. It is up to the Chamber to determine the
22 probative value and any other indispensable information contained in
23 these reports.

24 The Prosecution has three corrections to make at this juncture.
25 The first correction with respect to the paragraphs we would like to be

1 admitted into evidence, first of all, in the document DRC-OTP-0152-0286,
2 we are not asking that paragraphs 86 and 87 be admitted into evidence.

3 PRESIDING JUDGE COTTE: (Interpretation) So 67 to 87 inclusive,
4 and -- to 85 inclusive.

5 MS. DARQUES-LANE: (Interpretation) That's right. Another
6 correction that we would like to make relates to public document
7 DRC-OTP-0129-0267, and we would like the following paragraphs to be
8 admitted into evidence: 73 and 74, and 84 to 87, in addition to the
9 paragraphs which we have already indicated.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
11 Court Officer, we are going to bring Witness 0317 to the
12 courtroom.

13 Yes, Mr. Hooper.

14 MR. HOOPER: Can I just respond very briefly to the indication
15 the Prosecution have just given as to the paragraphs that they want to
16 have admitted into evidence. That's my understanding of -- of what has
17 been said, because that was the request of the Chamber, as I understand
18 it, that the Prosecutor instruct the Court as to the paragraphs it wanted
19 to be admitted into evidence, which I take it to mean to have admitted as
20 proof of the truth of the facts contained within those paragraphs. And
21 I'm rather surprised, because towards the end of last week the
22 Prosecutor, of his own initiative, sent an e-mail that we all received
23 indicating those paragraphs that the Prosecutor, and I've forgotten the
24 precise wording of the e-mail, but I seem to recall it was most
25 interested in, or words to that effect, gave then numbered -- the numbers

1 of those paragraphs that the Prosecutor, for his part, was -- was
2 particularly interested in. And what I see this morning is that there's
3 been a departure from that and that the Prosecutor has now chosen a wide
4 selection of different paragraphs. Not entirely different, but
5 substantially different.

6 So, for example, as I recall, paragraphs 1 -- I'm talking about
7 the Security Council document, 0267. Paragraphs 1 through to
8 paragraph 34 inclusive, which has been referred to this morning, I don't
9 recall and I may be mistaken, but I don't recall that being on the
10 Prosecutor's indication of paragraphs to be relied on last week, and I
11 haven't had the opportunity now to compare the earlier e-mail, but
12 certainly I'd marked up my own papers not indicating that that's the
13 case. And what has been included here in that paragraph -- in those
14 paragraphs is the entire historical summary of a witness who is not an
15 expert witness and has never been produced or suggested to be an expert
16 witness. So we now have an expert witness by default, and I'm concerned
17 at this stage because I'm about, subject to questions from the victims'
18 parties and -- victims' representatives, and, of course, your Honours, I
19 anticipated I'd be embarking on a cross-examination of this witness very
20 shortly, and I'm going to require an adjournment and request an
21 adjournment in order to consider my position in respect of this request
22 by the Prosecution, because it will or may have the potential of altering
23 the nature of my questioning, because it's introducing matters that I had
24 not anticipated were going to be introduced to this extent.

25 We've always been placed, it's right to say, in a difficult

1 position, because it's almost as if the Prosecution have thrown up these
2 assertions of fact in the air and left them floating around for you, the
3 Judges, at sometime to attach sufficient weight and, as it were, gravity
4 to for them it fall into place in the case. And we've been, you know,
5 rather disarmed by that -- that particular aspect of it, because at this
6 stage it's very difficult for us to know how we should react to these
7 particular assertions, what weight, as it were, and interest we should
8 develop in respect of them.

9 So I'm just saying at this stage that the Chamber's placed in a
10 difficult position because it's probably not in a position to give -- it
11 maybe, but I suspect it's not in a position to want to yield to the point
12 of giving a definitive judgement at this stage as to what and what is not
13 to be admitted. You can understand in the light of that and this
14 extensive request by the Prosecutor that it puts us in a difficult
15 position, and in those circumstances, I'd ask for sufficient time, and
16 once we've finished the questions from perhaps the victims'
17 representatives and your Honours, perhaps close to that time I can at
18 least give your Honours some better idea how much time I think I need and
19 which I'd seek your Honours to be gracious enough to grant me to provide
20 us with the time to prepare a cross-examination which may now be on a
21 very different footing than the one I'd anticipated.

22 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, I'll
23 give you the floor just in a moment.

24 The e-mail you're referring to, Mr. Hooper, is an e-mail of the
25 3rd of December, 2010, unless I'm mistaken, sent at 2.48 p.m.

1 Madam Prosecutor is going to explain whether the objective in that e-mail
2 is the same objective that we're pursuing this morning. It would seem
3 that in reality that e-mail related to paragraph 164 to the decision 1665
4 concerning Rule 40 and concerning -- concerning Rule 140, excuse me,
5 concerning the paragraphs that the Prosecutor wanted to use for the
6 examination-in-chief.

7 Madam Prosecutor, I give you the floor to tell us if that is the
8 same objective that we're pursuing today.

9 MS. DARQUES-LANE: (Interpretation) Thank you. The paragraphs
10 that we mentioned in our e-mail were mentioned just by way of indication
11 to draw the Chamber's attention and the attention of the parties to the
12 issues that we were going to address, also the paragraphs that were the
13 most relevant.

14 With regard to the admission of paragraphs from those reports
15 into evidence, the Prosecution, before hearing the witness, wanted to
16 actually tender if not all three documents, at least two in full. So we
17 cannot really draw an analogy between a paragraph that we cited by way of
18 reference on an indicative basis, on the one hand, and, on the other
19 hand, the paragraphs we wish to have admitted into evidence.

20 I would also like to draw the Chamber's attention to
21 document 1562, 1562-Conf Annex A which -- in which the Defence had all
22 necessary time to familiarise itself with the issues we intended to
23 address, the fact that the statement made by Witness 0317 was going to
24 address the reports in their entirety, and, in fact, the Defence has had
25 these reports for more than a year.

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by the Court

Page 12

1 The Prosecution's position, and with all possible respect to my
2 learned friend, therefore submits that the Defence's argument is specious
3 for those reasons.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Madam Prosecutor. We're going to make an effort to be reasonable all
6 round with regard to the situation that we're addressing this morning.
7 We're going to adopt a reasonable position.

8 Could I ask the Court Officer to bring in Witness 0317, please.

9 (The witness takes the stand)

10 WITNESS: DRC-OTP-P-0317 (Resumed)

11 (Witness answered through interpreter)

12 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.

13 THE WITNESS: (Interpretation) Hello.

14 QUESTIONED BY THE COURT:

15 PRESIDING JUDGE COTTE: (Interpretation) We did not see you
16 again at the end of the afternoon yesterday because the Chamber discussed
17 some procedural matters. Those discussions continued this morning. This
18 leads me to ask you, as far as you can, to provide complementary
19 information concerning the methodology that you applied in your capacity
20 as the head of an investigating unit. I don't have the exact title of
21 the unit in mind at the moment, but I'm sure you understand what I'm
22 referring to.

23 You said to us yesterday that in the context of your activities,
24 you heard a significant number of people. This morning we are going to
25 focus on the people who were linked with the Bogoro attack essentially,

1 but no doubt the methods are basically the same for each combat location
2 which you had occasion to visit.

3 You said to us that you met people in Bunia, people who had
4 escaped from Bogoro, people who had fled and who had taken refuge there.
5 If memory serves, you had said that you also met people in Bogoro, but
6 apparently in far lesser number, because you only spent a very brief time
7 in Bogoro.

8 You said to us that in terms of methodology, you used
9 questionnaires, you took notes, that in certain cases on the basis of the
10 context or the urgency, you took these notes in notebooks. You also said
11 to us that the general rule was that, very shortly afterwards, notes
12 taken in this fashion would be transferred, first of all, onto an Excel
13 spreadsheet and then into a database. You also said to us that in
14 addition to people who had escaped from Bogoro, you interviewed men and
15 women of the church, perhaps representatives of organisations, and that
16 this overall was the spectrum or the scope of your activity.

17 What we would like you to clarify for us this morning is the
18 criteria that you used to select one interview rather than another. I'd
19 like to explain that a little more.

20 With regard to all of the interviews that you conducted with
21 escapees from the conflict, men and women of the church, were all of
22 those interviews transcribed onto the Excel spreadsheet and database
23 subsequently? In order to retain a piece of information, did you wait
24 until you had obtained several interviews that corroborated each other,
25 or did you rely on a single interview with regard to a given event? How

1 did you proceed when you had contradictory interview information? Did
2 you have those interviews appear as contradictory statements, or did you
3 try and reconcile those positions with the idea of achieving some sort of
4 consistency in your report with regard to your -- the objectivity and
5 neutrality that you were aiming for?

6 I hope that I've expressed this clearly. Could you tell us more
7 about the method in more detail.

8 A. To begin with, as I said, we interviewed people who knew the
9 situation well, not necessarily asking for information on the detail of
10 the incidents but perhaps information as to where the different armed
11 groups were, what was the situation in the capital, what was the basic
12 information that they had. They also had knowledge of the various
13 commanders of the armed forces. That was a general approach. On the
14 other hand, we also tried to identify eyewitnesses and the victims
15 themselves as far as possible. Particularly when we were in places where
16 these witnesses and -- these eyewitnesses, excuse me, and these victims
17 were not going to encounter safety problems, we informed them once again
18 through professors. For example, in Bunia this happened a lot. There
19 were certain university professors who knew where these
20 people were, where they lived, or we also turned to civil society
21 institutions to get such information. That is why we interviewed a large
22 number of people. And we did that, in fact, as you said, to try and
23 obtain information that corroborated -- or that coincided with what we
24 were hearing.

25 And then coming to the incidents itself, to obtain a description

1 of the incident, we obtained information from these incidents -- from
2 these witnesses and people we interviewed. Sometimes we would get
3 contradictory information. Some might say that the armed forces were
4 active from 5.00 until 6.00 in the morning. Others might give another
5 time. But the -- really, at the end of the day, the information that we
6 collected was the same with regard to all of these incidents.

7 Coming to the report now, it was not easy to incorporate all of
8 the detail, of course, so we would do a summary, and sometimes we would
9 take certain cases that we considered to be illustrative of the
10 situation. It would depend on the incident whether we took one case, two
11 cases, and so on to illustrate.

12 Certain interviews which were more general in nature were not
13 necessarily incorporated into the Excel spreadsheet that we were running
14 throughout this six-month period, but we took notes, and afterwards we
15 drew up a document of notes of the interviews that we had conducted with
16 those people.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, madam.

18 Did you have in mind the -- a concern with the independence of
19 the sources who were participating in these interviews? Was that an
20 automatic reflex in your mind, and could you get a feeling for whether
21 the person you were talking to may perhaps not have been particularly
22 independent or have had sufficient perspective with regard to the facts?
23 Did you take this into account?

24 A. Absolutely. For example, some of the professors that we talked
25 to recognised openly that they were not impartial, and that is why we

1 talked with several people. The people who worked within international
2 institutions to our mind were impartial. Certain members of the church,
3 particularly those who were not of Congolese nationality, as far as we
4 were concerned were impartial. And then the eyewitnesses and the
5 victims.

6 Sometimes we had information, for example, concerning the
7 aggressors which was provided by some 20 different people. In other
8 cases, hundreds of people did not mention this, and in those cases we
9 would state this discrepancy in the report. For example, certain people
10 would say that the aggressors were Ugandans because they had heard a
11 language spoken which they believed was Swahili as spoken by Ugandans.
12 In that -- in those cases, we would note the information, but we would
13 say that not everybody had made that same identification.

14 This raised a difficulty sometimes. Sometimes victims would
15 identify also the Congolese forces or the forces of Mr. Mbusa or Mr. --
16 Mbusa Nyamwisi. Sometimes people said that Mr. Nyamwisi's forces were
17 assisting because they were based in Beni, and some people said that
18 after a certain period of time there was also participation by the
19 government -- the Congolese government. Assistance, for example,
20 providing uniforms.

21 When witnesses and victims said that people were wearing
22 APC uniforms, as far as we concerned, this was not proof that the
23 aggressors were from the APC forces.

24 PRESIDING JUDGE COTTE: (Interpretation) I'm going to ask you
25 questions in two different ways, the first a little brutal and the second

1 a little gentler.

2 When you had the result of all of this these interviews, did you
3 ever censor yourself? That's the brutal way of asking the question.
4 Putting it more gently: Did you sometimes make choices? If so, on the
5 basis what? On what basis did you censor the information or self-censor
6 what you were doing or did you make choices? Sometimes did you say, "All
7 right. I'm not going to put this particular piece in the report"? If
8 so, what were the motives that led you not to put everything in the
9 report if that was the case?

10 A. It was really a case of including everything with regard to the
11 incidents. For example, we would ask ourselves at the time when the
12 Ugandans were there and there were negotiations that had begun for them
13 to leave if we were not certain if -- it was prudent to be careful. Some
14 had said that the Ugandans were there and some had not, then we would
15 discuss the issue. And sometimes we said that that was the case. Some
16 people were more friendly to certain sides than others. Sometimes people
17 would minimise the impact of what they were saying. We might have
18 20 people saying they'd seen the Ugandans and nobody else mentioning it.

19 Once there was an incident of an attack on Drodro at the
20 beginning of April, and we still had people who had said that there --
21 they had seen what had happened, but there were very few people, and we
22 wondered whether it was realistic or not to include that information,
23 whether it was accurate, because we couldn't see why Ugandans would have
24 been interested at that time in attacking a Hema village. We knew that
25 there were Hema -- important Hema figures and even some church

1 representatives who could be partial in giving information to us or who
2 could also exaggerate information, exaggerate figures, for example, the
3 figures given by the territorial administrators. The figures given by
4 people who were so-called intellectuals were not necessarily the figures
5 that we should take seriously. So we would include that information and
6 those notes on the basis also of information we had from witnesses.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, madam. Once
8 again, the methods that you used and that you described yesterday that
9 you are giving more detail on this morning were not necessarily your
10 personal methods but the traditional methods used by the United Nations
11 services for missions of the kind you were carrying out.

12 A. Absolutely. That is correct.

13 PRESIDING JUDGE COTTE: (Interpretation) These were methods that
14 have been thought out, that have been tried and tested, that you
15 discussed, and that sometimes you challenged in order to improve them; is
16 that correct?

17 A. That is correct.

18 PRESIDING JUDGE COTTE: (Interpretation) And what was the
19 essential objective. What descriptive word would you apply to the basic
20 objective behind your investigation?

21 A. So that justice would be done one day. That was the objective at
22 the end of the day. The way in which we carried out investigations was
23 designed to get as close to the truth as possible so that the truth would
24 be as accurate as possible and so that one day this basic information
25 would make it possible for the forces of justice to open an

1 investigation. We -- this is a question which we were also pursuing with
2 the Congolese justice system so that the Congolese justice system could
3 open investigations on the situation. It was not easy because there was
4 no independent justice system in Ituri, but once the international -- or
5 once the community decided to assist the Congolese by sending independent
6 judges and sending the Prosecution of the International Criminal Court,
7 then that meant certain inquiries could be opened.

8 PRESIDING JUDGE COTTE: (Interpretation) And when you began an
9 interview, how did you introduce yourself to the person you were
10 interviewing? How did they know who they were dealing with?

11 A. Absolutely. We began by introducing ourselves. We said that we
12 were from MONUC, from the human rights section, that we wanted to
13 interview them concerning the incidents that had taken place in Bogoro,
14 in Mandro, but also sometimes, if they had knowledge of them, other
15 incidents as well. For us, what was important in all of the human rights
16 investigations was the protection of witnesses and victims.
17 Unfortunately, I think that there is no system in existence that provides
18 complete protection, and so from the beginning we said that if we saw
19 people individually, it was because we were considering their individual
20 safety and because they, too, should not talk about the details of these
21 interviews with other people. We said that we were going to leave them
22 our contact details so that if they felt unsafe, they could contact us.
23 But we did specify that we did not have the necessary means to protect
24 them. Perhaps for extreme cases we could intervene through
25 United Nations security, for example, but that would only be an

1 exceptional situation.

2 And then it also depended on the person. If we could see that
3 the person did not feel sufficiently at ease -- most people wanted it
4 speak straight away, that being said, and in that case we let them speak,
5 and then according to what they were telling us, we would ask questions,
6 and then little by little we would ask for identity, detail concerning
7 ethnic origin, locality, and so on.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness, for
9 all of these additional details.

10 At this stage in our debates, and of course, after the three
11 Judges yesterday evening and this morning had an opportunity to discuss
12 this, first of all, the Chamber would like to specify something clearly.

13 Professor Fofé made allusion to this matter yesterday. We are in
14 the presence of a witness and not of an expert. Let us be clear on that
15 point.

16 The Chamber would also like to recall that these reports are not
17 unknown. They have not appeared in this courtroom yesterday afternoon
18 only.

19 I'm going to let my colleague, Judge Van den Wyngaert, whose
20 English is better than mine, read paragraph 19 of decision 1590 of the
21 2nd of November, 2009. This is a decision which allowed the addition of
22 the witness statement of Witness 0317 to the list of Prosecution
23 witnesses.

24 I give you the floor, my learned friend.

25 JUDGE VAN DEN WYNGAERT: "The Chamber notes in this regard that

1 the Defence for Mr. Katanga has stated that --"

2 I start again. I'm sorry.

3 "The Chamber notes in this regard that the Defence for
4 Mr. Katanga has stated that in order for these kind of reports to be
5 admissible, it would be a prerequisite for the person who produced the
6 report to be available for cross-examination 'in order to give an
7 opportunity to the Defence to ask questions about the person's
8 methodology in collecting evidence and the foundation for the conclusions
9 drawn from it.'

10 "Considering the extent to which the Pre-Trial Chamber relied on
11 the reports in question in this decision on the confirmation of charges,
12 the Chamber deems that it is important to hear P-0317 and to allow the
13 Defence to cross-examine her on the methodology used in compiling and
14 drafting the reports."

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, your Honour.
16 Thank you to our interpreters.

17 The issue of these reports is therefore not a new matter. It was
18 already raised on the 2nd of November, 2009, and at that time, it was
19 already a matter of envisaging cross-examination on this point, the
20 witness still being present in the courtroom.

21 The Chamber has been most attentive, you may be sure, to what you
22 said yesterday, Mr. O'Shea and Professor Fofé, and, of course, that
23 explains our care in asking the Prosecution to limit the paragraphs of
24 these reports admitted. That is also behind our e-mail to the
25 Prosecution this morning, limiting the parts admitted into evidence to

1 the passages in the reports that the Prosecution intends to rely on as
2 evidence.

3 In terms of cross-examination, that significantly reduces the
4 scope of material compared to yesterday evening.

5 The Chamber has asked the witness to provide considerably more
6 clarification concerning the methods applied and the conditions under
7 which both the interviews took place and their transfer into other forms
8 of record, both provisional and later more definitive. These are the
9 reports that we have before us today.

10 The Chamber believes that no one will challenge that the reports
11 are relevant to the extent that they are indeed relevant to the matters
12 within the mandate of this court. The questions asked of the witness
13 this morning have made it possible for the Chamber to get a better idea
14 of the probative value that can be ascribed to these reports. Their
15 authenticity with the exception of the report 0785, which
16 Madam Prosecutor has had the wisdom to entirely withdraw from her request
17 this morning, is not in question. The authenticity is not in question.
18 The witness has explained to us that she was the author, even though she
19 did receive assistance in certain parts of the report and for certain
20 passages from colleagues who had greater specialisation in the field of
21 child protection. There were also people who had greater political
22 expertise who were called upon to contribute to these two reports.

23 With regard to the reports 0267 and 0286, there is no question as
24 to authenticity. These reports would seem to the Chamber to have been
25 drafted, as has been explained to us, with a view to ensuring objectivity

1 and, a word that was used yesterday, "impartiality." Their objective is
2 to inform, not to take sides. These reports would seem to the Chamber to
3 have a sufficient degree of reliability.

4 As to prejudice caused to the Defence when it comes to challenges
5 raised by the accused, the Chamber noted yesterday that when asked by
6 Madam Prosecutor yesterday, the witness made reference to Mr. Katanga, in
7 particular with reference to a brief interview with Commander Dark. She
8 referred also to Mathieu Ngudjolo, both with the oral testimony that all
9 of us around this room heard yesterday, and this was reiterating what
10 could be found in the statement made by the witness and, as well, in
11 certain paragraphs in the reports which, incidentally, Madam Prosecutor
12 intends to tender into evidence.

13 The context that Professor Fofé yesterday reminded us of was in
14 relation to a different witness, and the Chamber had felt that the
15 contextual elements had been sufficiently detailed.

16 Unless the Chamber is mistaken, what was said was in relation
17 with a witness in relation to several audio and video presentations.
18 This happened with Witness 0030 and then Witness 0002, and in those cases
19 the Chamber believed that the contextual information provided on that
20 occasion had indeed appeared sufficient. Here again we are facing
21 contextual information selected by Madam Prosecution at the behest of the
22 Chamber which is different to the information provided by P-0002 and
23 P-0030 during the cross-examinations of said witnesses.

24 Counsel O'Shea yesterday maintained, and we listened very
25 carefully to what he said, that he was apprehensive concerning the

1 methods of the investigation used. He stated that they were not police
2 or legal investigation methods.

3 We have before us reports, two of which are to be tendered by
4 Madam Prosecutor, and these are reports drafted by UN personnel who were
5 concerned to understand how certain events occurred. The ones that we
6 are -- the events in question were the ones of which we are in particular
7 seized and other events of a similar date.

8 The Chamber is perfectly aware that the methods utilised were not
9 the same as the methods employed by police investigators or legal
10 investigators, and it is quite precisely because they are not police
11 investigations or legal investigations that the Chamber, when the time
12 comes, shall accord them the appropriate weight of probative value. In
13 other words, they will -- the probative value will be given to the
14 appropriate excerpts and paragraphs from these reports. This probative
15 value will be given bearing in mind that these are reports established by
16 UN services acting in an impartial manner with a concern to understand
17 the events in question. The Chamber recalls yet again that these are
18 neither police reports nor OTP investigations.

19 The Chamber, therefore, intends to admit as evidence the
20 paragraphs that were selected this morning by the Prosecutor. This is
21 being done at the end of a process that the Chamber considers to have
22 been fair.

23 The floor will now be handed to the Legal Representatives of
24 Victims so that they may put any questions to the witness if they see
25 fit. The Chamber considers that these reports have been enough discussed

1 and that there is no requirement to offer additional questioning time to
2 the Defence when their cross-examination commences.

3 Madam, you represent the category of child soldiers who are also
4 victims. You heard what was said yesterday, and in accordance with
5 decision 1665, you have submitted to us a list of questions that, having
6 heard from the witness, you now intend to put to the witness yourself.

7 Madam, the floor is yours. We clarify yet again that the witness
8 did state yesterday, if my memory serves me correctly, that if she had
9 seen any minors, she was unable to identify the age of these persons.

10 MS. GOFFIN: (Interpretation) Good morning, your Honours.

11 QUESTIONED BY MS. GOFFIN:

12 Q. (Interpretation) Witness, my name is Julie Goffin. I work with
13 Jean-Louis Gilissen and I am replacing him today. And as the
14 Presiding Judge has mentioned, I represent a very special category of
15 victims in this case, and that is child soldiers. My questions are
16 naturally going to be in relation to this category of victims, and I --
17 from what you said yesterday, I would say that the elements that you
18 collected with relation to this particular category of victim was a
19 colleague who was specialised in child protection.

20 In your mandate of 2002/2003 in MONUC, among all of the
21 information that you were able to collect yourself or in cooperation with
22 the person that I just mentioned and in the framework of the collection
23 of that information, were you able to observe the presence of any child
24 soldiers in these armed groups operating in Ituri at that time?

25 A. Often when we were in Bunia, in fact, or when we were visiting

1 localities where there were armed forces, we would see, indeed, members
2 of the militia who were of very small stature with children's faces.
3 However, I personally did not interview any child soldiers. It is true
4 that I did interview people who said that they had 12 or 13 years of age,
5 because sometimes, given the number of people that we met, I had occasion
6 to talk with them, but I did not hold interviews with anyone who said
7 that they had been associated with armed groups.

8 Q. Very well. And still within that framework, did you observe the
9 presence of any child soldiers in those group -- those armed groups or
10 within any of the armed groups operating in the area? Would you be able
11 to give us an idea of what proportion of the armed groups these child
12 soldiers would represent? What percentage of the forces were they?

13 A. I could not -- I did not mention any figures when I did the
14 interviews myself. I don't know if there is a list of children among the
15 combatants, and I would not be able to tell you how many combatants there
16 would be in one group or in another. However, I think that either in the
17 UPC or in the Lendu armed groups, I think that there were child soldiers
18 that were associated with those armed groups, but I cannot say that I
19 interviewed them or that I analysed what their role was or what they were
20 doing in those armed groups.

21 Q. Very well. Did you observe, and still within that same
22 framework, did you observe any female child soldiers among those armed
23 groups?

24 A. I do not recall having seen any girls with uniforms. I did,
25 however, see some girls with the armed groups.

1 Q. And what was their role in those armed groups? Did they have a
2 special task in particular?

3 A. I could not go into details. Personally, I did not follow the
4 case of children being associated with armed groups.

5 Q. Very well. And still within the framework of your data
6 collection that you undertook in order to draft the reports at hand, did
7 you ever discuss the enrollment of child soldiers or the methods of
8 recruitment used for recruiting child soldiers?

9 A. The only time when I was able to address this issue was when I
10 was talking with members of civil society. This was, notably, through
11 the sources who did have knowledge on the subject or also when we
12 discussed things with UN soldiers, and this was much later, as of
13 September, when they were more present in Ituri. It was through them,
14 but I personally did not conduct any specific investigations on that
15 matter.

16 Q. Would you be able to tell us whether there was any enforced
17 enlistment? Were you able to broach this issue specifically?

18 MR. O'SHEA: (* Previous translation continues) ...

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, yes.

20 MR. O'SHEA: (* Previous translation continues) ... question
21 which was put before this one about recruitment. I understand that, you
22 know, there may have been a wish to provide a little bit of context.
23 We're, of course, not charged with recruitment, and so I think this
24 question is perhaps going a little bit too far.

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, you're

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Ms. Goffin

Page 28

1 talking about the question that says: "Would you be able to tell us
2 whether there was any enforced enrollment? Did you ever broach these
3 matters specifically?" Is that the question you're referring to
4 specifically?

5 MR. O'SHEA: I refer to the decision 1665, of course, and
6 your Honours' directions on the role of victims in questioning witnesses,
7 and the rule is that they are confined to questions of contention, which
8 are in contention in the case. This is not a question which is in
9 contention in the case. I understand -- I didn't interrupt the first
10 question about, you know, addressing the question of recruitment in
11 general terms because I thought, All right, it's providing a little bit
12 of context. But once one goes into forced recruit, then one is going
13 into incriminating behaviour, an incriminating behaviour which is not a
14 matter of contention in this case but which might -- the answers may
15 potentially have a prejudicial effect on the accused.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

17 It's true, Ms. Goffin, that we are -- we are interested here with
18 the use of child soldiers and not with the recruitment of child soldiers.
19 Maybe this is getting a little caught up, but Mr. O'Shea is correct. So,
20 could you please rephrase your question or perhaps move on to a new
21 question.

22 MS. GOFFIN: (Interpretation) Yes, I did feel that this was
23 important for the context, but I will indeed move on to a next question.
24 We did not have the -- the witness did not have the occasion to discuss
25 this matter specifically.

1 Q. More specifically, when we look at the conditions of child
2 soldiers, I'm just wondering if you could give us information concerning
3 the information that you collected yourself or in cooperation with other
4 colleagues. As concerns the condition of child soldiers, did you receive
5 any information as to find out whether it was -- whether it was possible
6 child soldiers to escape their condition as child soldiers? Did you have
7 any cases of child soldiers who -- who were later reintegrated in a
8 civilian life, who had wanted to escape, who had attempted to escape,
9 whether it was possible for them to escape from their role as a child
10 soldier?

11 A. Here again I can say that I got information from sources, not
12 from victims themselves. I heard that their -- as concerns child
13 soldiers who had been able to escape and who had managed to reintegrate
14 into normal civilian life. However, these items of information were
15 provided by sources, or they came out through discussions that I had with
16 colleagues from the child protection service.

17 Q. I should like to finish now with a question to do with the period
18 following the start of the pacification process. In other words, after
19 June 2003.

20 Did you ever receive any information relating to the
21 demobilisation process, and, if so, what information did you receive
22 concerning the stance of the different military leaders relating to that
23 demobilisation process?

24 A. You're talking about after June 2003?

25 Q. Or if you'd prefer, we could start from the very start of that

1 process, from April 2003.

2 A. During the negotiations before the Ituri Pacification Commission,
3 this question had already been addressed, and the various armed groups
4 had started accepting demobilising children. However, I am not able to
5 specify the date upon which the first demobilisations took place. I was
6 not directly involved in this process. Furthermore, as of
7 September 2003, the human rights section and the child protection service
8 opened a standing office in Bunia, and it was those colleagues who were
9 following most closely the process. But yet again, I say that for the
10 issue of demobilisation, there was a specialised unit to assist in the
11 process, and also as concerns children, they were covered by the child
12 protection section.

13 Q. Very well. And just to finish off, given the information that
14 you had and given the existence of that specialised unit, once the
15 children had been demobilised, were they safe from any reintegration into
16 the militias or re-recruitment, or did you have information to the effect
17 that there was no such guarantee in place? And as the situation evolved
18 on the ground, I was wondering what can you tell us about the risk of
19 these child soldiers having to become soldiers again as further
20 skirmishes broke out?

21 A. Through our sources, we did learn that some of these children had
22 been reintegrated afresh into the armed groups where they were previously
23 prior to demobilisation. However, I learned of this through the reports
24 that I read on a daily basis or through reports drafted by colleagues who
25 were based in Ituri, and I was not at all personally involved in the

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Luvengika

Page 31

1 investigations that had been conducted on that matter.

2 Q. Very well. Thank you very much. I think I will end there.

3 Thank you very much, Madam Witness.

4 MS. GOFFIN: (Interpretation) My thanks to the Chamber also.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
6 Ms. Goffin.

7 Counsel Luvengika, the floor is now yours, and it's up to you to
8 introduce yourself.

9 MR. LUVENGIKA: (Interpretation) Thank you very much,
10 your Honour. Thank you, your Honours.

11 QUESTIONED BY MR. LUVENGIKA:

12 Q. (Interpretation) Good morning, Madam Witness.

13 A. Good morning.

14 Q. My name is Fidel Luvengika Nsita. I am the Legal Representative
15 of Victims who are participating in this case, victims of Bogoro of
16 the -- of the attack of the 24th of February, 2003, who have agreed to
17 take part in proceedings. I'm going to ask you some questions obviously
18 relating to what you have testified here before the Chamber and as
19 concerns the interests of the victims. I will be focusing on Bogoro, and
20 I know that you only had a very brief visit to Bogoro, and that -- that
21 enabled you to obtain a little information about what occurred there but
22 that you had a lot more information from the investigations held with
23 victims and witnesses.

24 Yesterday, you mentioned a list of victims that you had drafted,
25 and you had mentioned the figure of about 300 or 330 victims on that

1 list. Would you be able to tell us upon what basis you had created that
2 list? What kind of data was contained -- or is contained in that list,
3 because I presume that this list still exists somewhere? And is it
4 mentioned on that list what kind of harm the victims had suffered, on
5 that list?

6 A. The list of victims was compiled following the interviews that we
7 had had with family members or with eyewitnesses who were able to
8 identify the person who had been killed in some cases, and in other
9 cases, members of the family reported to us that their son or uncle had
10 not returned to Bunia after one month's absence, and so they presumed
11 that the person in question was dead. However, it was considered -- we
12 presumed that on that Excel spreadsheet, and later in the final report,
13 that among those 330 persons there were some who had been summarily
14 executed and others who were listed as missing.

15 And what was also described there by the victims and survivors,
16 they described this as well, at times they were able to say how the
17 person was killed. For example, they might say, "I was hiding in a
18 corner and they arrived, and the person was killed by a machete," for
19 example. Or in other cases, we might say that X and Y had been hit by
20 bullets. For example, for people who were hiding in the school, they
21 told us that they had been killed by weapons such as machetes, knives,
22 et cetera, and not by heavy weapons.

23 And it was important for us for this list of victims to be based
24 on the accounts given by people. Very often family members, but also
25 from eyewitnesses who had lived, for example, say, in the neighbourhood,

1 or by others who may have been hiding in the bush and who were able to
2 see someone who they recognised, whose name they knew, being killed by a
3 militia member.

4 I think I may have only answered one of your questions.

5 Q. Yes. Certainly. You're trying to enlighten the Chamber and the
6 parties and participants about the details that you're giving in terms of
7 the way that the list had been drawn up.

8 Did victims talk about other kinds of harm that they had suffered
9 in the course of that attack?

10 A. For Bogoro, it was mostly killings, disappearances, and attempts
11 of murder, because people had survived with wounds. But if you are
12 referring to rape cases, we did not have cases referred to us relating to
13 rape, for example.

14 Q. A short while ago you talked about abductions. Were these
15 abductions of young boys, young girls? Which people were abducted?

16 A. To be very precise, I didn't mention abductions in the case of
17 Bogoro. I mentioned disappearances.

18 Q. Yes, exactly.

19 A. Yes. I didn't speak about abductions, because for a start, the
20 armed groups who were attacking Bogoro stayed there. So for the
21 eyewitnesses, it was very difficult to see whether they -- whether they
22 had left somewhere and taking abducted people with them. These victims
23 or these eyewitnesses were hiding in the bush, some of them up until
24 8.00 p.m., and then they fled. So they weren't in a position to give us
25 any further information about anyone who might have stayed *in situ* who

1 had not been killed.

2 And when they talked about disappearances, it was mostly about
3 members of their family about whom they had not had any information and
4 that during the attack had not been killed, or perhaps they were
5 elsewhere. But in other words, these people were not eyewitnesses to
6 what happened to those people. And when it was -- when they were talking
7 about members of their family, they presumed them to be dead if they
8 hadn't heard anything one month after the events. However, this does not
9 mean that we can be a hundred per cent sure that a disappeared person
10 had, in fact, been killed. It is possible that they had fled elsewhere.

11 Later, when we were in Uganda, we did indeed find some, not many,
12 but some persons who had fled and taken refuge in Uganda, but in the
13 report we distinguish between those who had been killed and there had
14 been eyewitnesses to the death in question, and others who had had been
15 listed as disappeared.

16 Q. Thank you. Still in the course of your testimony yesterday when
17 you were talking about the compilation of the list, you mentioned
18 underaged children who were killed and that the eyewitnesses did not know
19 the names of these children.

20 Now, how did you include such children on your list?

21 A. We would write "Child, 1 year," or, "Child, 2 years," and we
22 would indicate that the name of the individual is not known. That is, if
23 these were not family members, if these were neighbours. But I cannot
24 tell you the exact name of these children, underaged children, who are
25 not identified by eyewitnesses.

1 Q. In the course of your evidence, you talked about your trip to
2 Bogoro, but before you went to Bogoro, you were supposed to get an
3 authorisation, and I suppose that as an employee of the UN escorted by
4 the military, you certainly had a certain status compared to a poor
5 civilian.

6 Now, my question to you is: Apart from the six Hema victims you
7 talked about yesterday, the six victims who were killed, who were
8 arrested on the way between Bunia and Kasenyi and who, according to you,
9 were executed, do you know whether the population at the time you went to
10 that region was using that road? Could they use that road? I'm talking
11 about the civilian population.

12 A. It all depended on which civilian population you are talking
13 about. When Bogoro was occupied by UPC forces, it was difficult for the
14 Lendu population to use that road to go to Kasenyi and Tchomia, towards
15 the lake. Besides, Commander Dark and Mr. Ngudjolo clearly informed us
16 that this was one of the reasons why they captured Bogoro.

17 The same equally applied when the Lendus took over Bogoro. We
18 were informed that this time the Hemas were afraid to use that road.

19 However, I myself, when we visited Bogoro, I do not remember
20 having seen any civilians on that road. Well, except that once when we
21 went to Bogoro there were certain Lendus, civilians, but there were no
22 Hema -- Hemas in Bogoro when we arrived there. Those who were there were
23 only Lendus.

24 Q. Thank you. Now, do you know whether the presence of the Ugandans
25 in Ituri which -- who were allegedly there to secure the region and

1 protect the civilians, do you know whether or not they participated in
2 the hostilities, that is, after you conducted your investigation? You
3 said that in the interviews you had with victims, they told you about the
4 presence of Ugandans in the various attacks that took place, and you
5 yourself were -- you yourselves were escorted by these Ugandans. You
6 were with them. You obtained information from victims about Ugandans,
7 and they escorted you.

8 Now, did you have any opportunity to investigate these
9 allegations about Ugandans?

10 A. When we discussed with victims in Bogoro, Mandro, and in the
11 other localities such as Lipri, Kobu, Kasenyi, Tchomia, and others, of
12 course, the victims also related former incidents to us.

13 Now, in the case of Bogoro, after Drodro certain victims talked
14 about the existence of Ugandans in the locality. I am not fully
15 convinced, I cannot state with certainty that the Ugandans were there,
16 because there were not many people who recognised any Ugandans.
17 Furthermore, it was the period during which the Ugandans had changed
18 sides. They were no longer supporting the UPC. They were, rather,
19 supporting the Lendu forces. And so these few people who told us that
20 they identified Ugandans could have been people who were manipulated by
21 the Hemas, because that happened. There were several cases where people
22 would say they saw certain forces, but as I was telling you, for us, we
23 considered the truth to be what 80 per cent of the people said, what
24 90 per cent of the people said. Even if we included this in the report,
25 we had doubts with regard to Bogoro and Drodro.

1 Now, with regard to the involvement of the Ugandans since 1998
2 and 2002, we had a lot of information that the Ugandans were involved.
3 They supported many armed groups, and they would change sides depending
4 on their interests and depending on the Ugandan commander who was heading
5 the Ugandan defence forces. And it also -- furthermore, from the
6 information we obtained, the Ugandans were paid by traders, by business
7 people, or farmers, or Hema cattle rearers, and they bombarded many Lendu
8 villages. But this was at the time when they were supporting the Hemas,
9 that is, even before the creation of the UPC. And this continued right
10 up to the month of March, 2003, that is, early March 2003.

11 Q. However, within the framework of your activities, and I wanted to
12 ask this question at the very beginning of my examination, you were
13 assistant head of the section. Were you head of the special
14 investigation section or the special section for investigations?

15 A. The Special Investigations Unit.

16 Q. Thank you for that clarification. Now, in that context, within
17 the United Nations did it never occur to you to carry out investigations
18 into the involvement not of the armed groups in Ituri but the involvement
19 of other belligerents, the APC, UPDF, Rwanda, and others?

20 A. There were a lot of difficulties going to Ituri before the end of
21 2002. No direct investigations were conducted in these villages that
22 were attacked before 2002. There were a few military observers who were
23 based in Bunia, but given the fighting, they could not move around. They
24 could not leave Bunia. Of course, they were merely conducting military
25 investigations into the involvement of Ugandans, but I cannot go into the

1 details of such military investigations.

2 The cases we investigated, well, on such cases I can provide
3 details based on the information we collected from victims. For example,
4 there were other cases, such as the attack on Nyankunde, where a good
5 number of victims told us that APC forces fought side by side with the
6 Lendus. I think that has more probative value than when you have only a
7 few people recognising the presence of an armed force.

8 Of course, our investigations were not limited to Ituri. We
9 conducted investigations in other regions as well, and from the
10 information we received, we tried to identify perpetrators in each
11 investigation. But now since we are focusing on specific incidents, I
12 can only confirm only the facts which I investigated or facts which I
13 received from authoritative sources. Of course, we also talked to many
14 victims and Lendu survivors who gave us their account. But you will find
15 this in the major report of 2002/2003.

16 Q. Now, the victims you met in Bunia, did these victims come to you
17 to tell you their account, or there are other victims that you went to
18 meet yourself?

19 A. Some victims came to see us, and we went to see others, but the
20 majority came to us. Bunia's a small town, and the information spread
21 rather rapidly that we were around. Furthermore, it was the first time
22 that an investigation team was visiting the place, an investigation team
23 that could go to localities where attacks had taken place, and so it was
24 important for the victims to discuss with us.

25 We went to the Mudzipela hospital as well, where we saw victims

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Luvengika

Page 39

1 who were seriously injured, because some of them were in hospital for
2 more than one month, and some of the injured persons were UPC militiamen.

3 Q. Apart from the Mudzipela hospital, did you visit any other health
4 centres in Bunia where there were victims?

5 A. No. I have no recollection of that. Mudzipela is known to be
6 the Hema neighbourhood of Bunia. That is probably the reason why many
7 Hema persons who were injured felt safe going to that hospital.

8 Q. There was an MSF health centre in Bunia. I don't know whether it
9 was in Mudzipela. Did you have the opportunity to visit that centre?

10 A. No, not on that occasion. Later on, we discussed with colleagues
11 from MSF, but not within the framework of this investigation. And I am
12 wondering whether they were already there on the spot. I really don't
13 know.

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 Q. Thank you very much.

21 MR. LUVENGIKA: (Interpretation) Thank you, your Honours.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Mr. Luvengika.

24 The time now is a quarter to 11.00. We are going to rise now.

25 We will resume at 11.30, and that means that the Defence teams of

1 Germain Katanga has 45 minutes to polish up their cross-examination. The
2 cross-examination will start at 11.30. Who is going to lead it? Is it
3 Mr. Hooper or Mr. O'Shea? Mr. Hooper. Fine.

4 Madam Witness, thank you for the answers which you provided to us
5 this morning. You, the accused persons, and ourselves will have
6 45 minutes before we reconvene at 11.30.

7 Court Usher, could you please lead the witness out of the
8 courtroom.

9 (The witness stands down)

10 PRESIDING JUDGE COTTE: (Interpretation) We stand adjourned, and
11 we will reconvene at 11.30.

12 Recess taken at 10.45 a.m.

13 On resuming at 11.33 a.m.

14 (Open session)

15 COURT USHER: All rise.

16 PRESIDING JUDGE COTTE: (Interpretation) We are going to
17 reconvene. Please take your seats.

18 Prosecutor.

19 MR. GARCIA: (Interpretation) If I may, your Honour, I will
20 simply take this opportunity to apologise for the absence of
21 Ms. Darques-Lane. She will return very shortly.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
23 We can begin without her.

24 JUDGE DIARRA: (Interpretation) There's no problem.

25 MR. GARCIA: (* No interpretation)

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 41

1 PRESIDING JUDGE COTTE: (Interpretation) Usher, could you please
2 bring the witness into the room. The accused persons are in the court.
3 Very well.

4 (The witness takes the stand)

5 PRESIDING JUDGE COTTE: (Interpretation) Witness, we will resume
6 our work. I'll give the floor to Mr. Hooper.

7 QUESTIONED BY MR. HOOPER:

8 Q. And good morning to you, Ms. Bakar. As you've heard, my name is
9 David Hooper, and I represent Germain Katanga in this case, and I've just
10 got a few questions for you. I'll certainly conclude my questioning this
11 morning and in good time, I hope.

12 Now, just so I can understand the position clearly, I understand
13 that you arrived at the end of 2002, that is, in December, based in
14 Kinshasa. Is that right?

15 A. That is correct.

16 Q. And you arrived having done obviously significant work in
17 Eritrea. Is that right?

18 A. That is correct.

19 Q. And was this your first mission to DRC?

20 A. Yes, it was my first mission.

21 Q. And your first mission outside Kinshasa was the mission that you
22 conducted on the 24th of March until the 6th of April, 2003. Correct?

23 A. No, that is not correct.

24 Q. Please, just let me understand the position. So there was a
25 previous mission that you conducted but not to Ituri. Would that be

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 42

1 right?

2 A. That is not correct. The village of Mambasa was also located in
3 Ituri, and we conducted investigations on an attack which had a lot of
4 victims. A lot of people had been massacred in Mambasa.

5 Q. Yes. I was at fault there. You remind me. You mentioned that
6 yesterday in your evidence.

7 And that was -- just so that we're clear, that was an attack
8 committed by which group?

9 A. It was an attack perpetrated by MLC, the armed group of
10 Jean-Pierre Bemba, with, I believe, the assistance of RCDN, the group of
11 Mr. Lumbala.

12 Q. All right. So I think we have a general idea where Mambasa is.
13 May I ask you, how long were you involved in that mission and in that
14 investigation at that time?

15 A. It was about three weeks. The first time we went to Beni. In
16 fact, the survivors had gone to Beni and also to other places. We went
17 to a small village where there were quite a few survivors.
18 Unfortunately, I cannot remember the exact name. It was perhaps an hour
19 and a half or two hours from Beni. We slept there for three nights so
20 that we could see as many survivors as possible.

21 Afterwards, in Beni --

22 Q. (* Previous translation continues) ... interrupt you. Not
23 rudely, it's just that it's not, clearly from what you've said,
24 necessarily relevant to our proceedings today. But can you just tell me
25 this: When was that? When was your Mambasa investigation? Was that

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 43

1 January of 2003 or some other time?

2 A. It began at the end of 2002, in December. The first mission was
3 not me. It was a colleague from human rights and a colleague from
4 political affairs, and afterwards, we went just at the beginning of
5 January. That is why I said it began at the end of December, because
6 there was already a team in situ.

7 Q. That's all right. So you arrive, as it were, with a new job in
8 the end of December, and then in January you go to Mambasa, and how long
9 did you spend in Mambasa and in that area generally? I don't need
10 details where you slept, just generally, how long were you out of
11 Kinshasa for on that mission in January of 2003?

12 A. In total, three weeks or three and a half weeks, and I went
13 twice. Later, connected with those investigations, we went to Gbadolite
14 for two weeks to see the presumed people responsible, Mr. Jean-Pierre
15 Bemba.

16 Q. All right. All right. Now, as we all know, 24th of March to the
17 6th of April, there is the mission to Ituri that concerns us, and I
18 understand from your statement that you say it would have taken about
19 ten days to prepare for that mission, and that once you'd heard of the
20 concerns of the mission, you would have tried to have got to Ituri as
21 soon as possible to make your investigation. So would I be right in
22 saying that you'd learnt about this incident at Bogoro sometime around
23 mid -- mid-March? I'm sorry, mid -- mid -- yes, about mid-March, about
24 the 16th of March, 10th to the 16th of March, something like that. Would
25 that be about right?

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 44

1 A. That would be accurate, I believe, even though I do not remember
2 the exact date.

3 Q. And as I understand it, the subject -- the object of the mission
4 at that stage as you came to leave Kinshasa was a focus on what it was
5 that had happened at Bogoro and what it was that had happened at Mandro.
6 Is that right?

7 A. Particularly what happened in Bogoro. And we also had
8 information that there had been a lot of other incidents before Bogoro.
9 So we also wanted to take the opportunity to have a look at those
10 incidents.

11 With regard to Mandro, I think that we received that information
12 once we were in Bunia.

13 Q. Now -- now, in the course of the -- I'll come back to what
14 actually happened during those two weeks of the mission.

15 You go back to Kinshasa on or about the 6th of April, I take it.
16 Is that right?

17 A. That is correct.

18 Q. And the reports that we have are essentially reports that were
19 effectively concluded by the end of 2003, as I understand it, though they
20 were tidied up by others, perhaps, before presentation, but how many
21 other missions to Ituri can you recall making after April the 6th, making
22 yourself, that is, in respect of going to Bunia, for example?

23 A. I would like to answer the first part of that question first.
24 The report concerning Bogoro, Mandro, and Lipri, Kobu, Bambu, and the
25 other incidents that were reported to us when we were in Bunia were not

1 published at the end of 2003. That report was published one month later
2 when we finished drafting it. The report that was published afterwards
3 was the long report on the violation of human rights in Ituri 2002/2003.

4 Now, turning to the number of missions that we carried out, that
5 was covered in the report 2002/2003. The total number of missions was
6 nine. However, I was not present, for example -- excuse me. It was
7 nine missions in total, but three of those missions were carried out in
8 Uganda. One of those missions was carried out in Beni and in the camps
9 of displaced persons around Beni, and so that leaves five missions in
10 Ituri itself.

11 Q. And you were on those missions. Am I right in concluding that?

12 A. I was on those missions, yes.

13 Q. And when you say "the nine missions," we're talking about
14 nine missions in 2003, are we not?

15 A. Yes, that is right. 2003 and -- it depends if you count Mambasa
16 as well. That began at the end of 2002.

17 Q. All right. Well, your later missions, were they concerned with
18 Mambasa as well or not?

19 A. No. The later missions were as follows: At least three in
20 Bunia, two in Beni, and also a mission in the north at Aru, Ariwara,
21 Kpandroma, Mahagi, but during that mission we also crossed the border and
22 went into Uganda.

23 Q. Now, on those missions, we know that you effectively attempted to
24 go to Bogoro and to go around Bogoro on the 26th of March. Did you visit
25 Bogoro again in 2003?

1 A. Just to clarify. We did not go to the environs of Bogoro. We
2 went to Bogoro itself. That is, the school that we were talking about
3 where the military camp was located was in Bogoro itself. The road to
4 Bogoro where we saw the houses that had been destroyed and the burnt-out
5 huts was also part of Bogoro. What I meant was we were not able to go
6 right inside. We saw the roads and we saw a part where the militia were.
7 We did not return to Bogoro for investigations. We went through Bogoro
8 to go towards Kasenyi once.

9 Q. And when you say "went through," you didn't stop in Bogoro. When
10 was that visit, the visit when you went through Bogoro to go to Kasenyi?
11 Can you remember?

12 A. I think that it was in June, because the attack in
13 Kasenyi/Tchomia -- in Tchomia there was an attack at the end of May, in
14 Kasenyi at the beginning of June. So it must have been in June.

15 Q. Thank you. Did you ever go to Aveba?

16 A. I don't think so, no. Other colleagues went there, but I did
17 not.

18 Q. Do you know which colleagues went there and when?

19 A. I could not say, because as I was saying, after a certain date,
20 once MONUC had set up with the military forces, we had an office which
21 was based there where we had human rights colleagues.

22 Q. When you say "based there," where is there?

23 A. Bunia. I apologise. They were based in Bunia definitively.
24 That is, they were not in Kinshasa. They were in Bunia from a certain
25 time onwards, perhaps 2004, perhaps the end of 2004. There was also a

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 47

1 colleague based in Mahagi. No. I apologise. Not Mahagi, in Tchomia.

2 Q. Well, that's obviously much later, and I think you're right,
3 towards the end of 2004, there's MONUC battalion, I think, of -- from the
4 Bangladeshi regiments based there?

5 A. Bangladesh.

6 Q. And that's obviously a much later time. So can we safely say
7 that there were no visits to Aveba or to Geti or -- let me include
8 Kagaba. Essentially Walendu-Bindi, the eastern side of Walendu-Bindi
9 that we're concerned with, there were no visits at all in 2003, and
10 probably for much of 2004, and certainly no visits in respect of any of
11 these investigations that we're concerned with.

12 A. You know, there are a lot of villages. There are a lot of
13 villages that we visited. Seven years later, I cannot remember all of
14 the details. In Aveba -- I believe that I remember visiting Aveba myself
15 (* as interpreted), but on the other hand, Boga is a village we visited,
16 and I cannot give you details of that.

17 Q. Boga is a Hema village, is it not? When did you visit Aveba?

18 A. No. I told you that I didn't remember visiting Aveba. I
19 apologise. I don't remember that visit.

20 Q. I'm sorry. It was probably translation. It sometimes happens.
21 I got the answer, "I believe I remember visiting Aveba," and I realised
22 that you'd said something earlier, so I'm going to clarify.

23 PRESIDING JUDGE COTTE: (* No interpretation)

24 MR. HOOPER:

25 Q. So there's been a hiccup. We're both probably speaking a bit too

1 quickly for those who have to serve our translations, so I'll slow up and
2 invite you to as well. You speak quite quickly, very clearly but very
3 quickly.

4 All right. So really, and this isn't a criticism because it may
5 have only reflected the security concerns of the time, it's no criticism,
6 but would it be fair to say that there was no access by your group at all
7 in 2003, or the early part of 2004, to the eastern villages, the
8 heartland, really, of Walendu-Bindi?

9 A. I would need to have another look at the map to be able to tell
10 you that we were able to go to this village, but really, I can't tell you
11 offhand. When you give me names, I can tell you that I don't remember
12 having gone there, but I can't tell you for all of Walendu-Bindi whether
13 we went to certain villages or not. However, I do remember very well the
14 report that we studied, Bogoro, Mandro, Lipri. I remember the details
15 quite clearly. Mandro, Tchomia, Kpandroma.

16 Q. Exactly. We know that you've spoken about those. That's why I'm
17 asking you about the places you haven't spoken about. I can certainly
18 show you a map, but it may be -- I'm looking at the time. I hope to
19 conclude, as I've said, this morning, and then my colleagues I'm sure
20 will be asking questions tomorrow, so perhaps if we can get a map to you,
21 perhaps on this particular discrete point you can perhaps visit your
22 memory. And it is a problem. This isn't a memory test. I know many
23 witnesses feel that it must be because of the position you're placed in
24 by us, but I appreciate this is events of seven years ago. And sitting
25 here, if I try and remember what I was doing in 2003, I can assure you

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 49

1 I've got no idea. I can't remember. So don't feel in any way a
2 criticism by that.

3 So interviews. Now, the -- the visit you paid, the mission that
4 you made, 24th of March, the 6th of April, led to the making of the
5 document that we have ending -- the report itself with its introductory
6 three pages, 0286-0289, the final report of the MONUC special
7 investigation team on the abuses committed in Ituri from January to
8 March 2003.

9 Do you -- do you have that report? I'm going to call that the
10 first report, because it's clearly the first report in time.

11 A. Yes. Just a moment.

12 Q. You've got it with the face by the outgoing code cable, probably.

13 A. (In English) Yes.

14 Q. And if we turn over -- that's the summary of it. And if we turn
15 to the report itself, that's the meat of, the product of the mission, and
16 just help me as to this, I know you said it yesterday, but the -- helping
17 us yesterday on this. This report, as I understand it, was a report that
18 you made. It was a report that you composed yourself, and it was a
19 report that was made in the circumstances as soon as possible, and I was
20 unclear when that report was completed in the form that we have it here,
21 but I understood you to say was it within -- was it ten days or
22 three weeks? Can you help me? I'm unclear how long it took before you
23 got back on the 6th of April before that report itself was completed.
24 How long would that have been?

25 A. (Interpretation) In fact, what we did was this: When we got

1 back, we conducted a more rapid analysis of what we had investigated, and
2 we drafted a preliminary report which went into far fewer details. We do
3 not have that preliminary report here. We also did MONUC press
4 conferences stating that we had come back, without giving any details,
5 but saying that we had -- confirming that we had been -- that there had
6 been massacres and we said that we had been conducting investigations.
7 The time that we took, in fact, was to enable us to put all of the cases
8 into the system. At the time it was the easiest system for us to use.
9 We did not have databases, so we put the information into the Excel
10 spreadsheet, because there were several of us who had conducted
11 interviews. So each person put their cases into the spreadsheet and then
12 we collated them. That is why it took a certain time. This is dated
13 June, so it took a month or five weeks. I don't remember exactly how
14 long it took us.

15 Q. Well, you get back April the 6th. So if we go a month or
16 five weeks, we're just into May. So are you saying the report was out by
17 about May?

18 A. A month, five weeks. We came back mid-April, that would make it
19 mid-May, end of May, to finalise the document. And afterwards there's a
20 process whereby everyone has to read the document, and then you have the
21 code cable, and then after that you send it to New York. So there is a
22 period of time between the finalisation of the report and it being sent
23 to New York and the publication of the final report.

24 Q. All right. Thank you. Now, as we get older we get wiser, but
25 not always. Computers and databases, help me with it, please. The

1 database you spoke about was a database set up in July 2003. Was -- the
2 spreadsheet, that was something that was before the database and
3 independent of it; is that right? And when did you start using the
4 spreadsheet? Was that as soon as the mission started in March or at a
5 later point?

6 A. When we got back, we needed to have some kind of system to
7 collate all of that information, because we'd had our interviews with
8 approximately 400 individuals even -- even though I had read the
9 questionnaires myself, we needed to be able to store that information and
10 so we decided to use an Excel spreadsheet, and we set that up with
11 someone from the child protection service who had already done this
12 before in the case of children associated with armed groups.

13 Q. Yes. So when did the spreadsheet come into existence? Was that
14 back in Kinshasa in -- in April when you got back?

15 A. Yes, in April, but I can't tell you if it was the 10th or the
16 15th of April, but, yes, it was rather quickly after we got back so that
17 we could enter the cases. Furthermore, the members of the team came from
18 different sections and couldn't stay with us for months on end. And I'm
19 talking about the Excel where -- spreadsheet, not the database.

20 Q. And then come July, presumably the Excel spreadsheet was absorbed
21 by the database. Would that be right?

22 A. No, it was not absorbed into it. There were other cases, a
23 hundred-odd cases, which was impossible, because the database was for the
24 whole of Congo, and so it was used by each field office. So the Excel,
25 to answer your question, wasn't actually entered into the database. It

1 would have taken far too much time for us to have done that.

2 Q. So the Excel, as I now imagine it, is a freestanding tool or
3 document, if you like, that remained in existence, and presumably it
4 remains in existence. Is that right?

5 A. It was -- it no longer was used once we had set up the database.
6 Once we had the possibility of scanning the documents and entering the
7 photos into the system, this was a much more progressive way of working.
8 So once we had the database, we no longer used the Excel spreadsheet.

9 Q. Right. So I'm beginning to understand. So you used the Excel
10 spreadsheet as a tool when you got back to Kinshasa. Once the database
11 was set up, you revisited all the material that you had collected and
12 collated, and booted that in, as it were, put that into the database.
13 Have I got that now? You entered that material onto the database,
14 thereby making the spreadsheet redundant. Is that right?

15 A. No. No, no. That is not right. The information, we started
16 entering them into the database as of the creation of that database. It
17 might have been July. Let's say the 1st of July it was set up. So if
18 there was an incident on the 20th of July, then the elements relating to
19 that which had been collected would be entered into the database. If we
20 had conducted an investigation in the month of May, then it would not be
21 in the database, because for us it was an already finalised
22 investigation. However, once the database had been created, we were in
23 Uganda, for example, as I was saying, and we would meet, say, with
24 refugees from Bogoro and Mandro, and there, in those cases, we would
25 enter that into the database.

1 Q. Right. So the database is a contemporaneous record of the work
2 being undertaken on all manner of subjects once the database is set up.
3 So the information, for example, that we'd be concerned with in this case
4 relating, say, to Bogoro and witnesses you've taken statements from,
5 et cetera, would be spread between the Excel spreadsheet and after the
6 database was set up, entries made on that database contemporaneously or
7 near contemporaneously to missions conducted after the setting up of the
8 database. Do I understand the position correctly now?

9 A. Yes, indeed. The investigations that we conducted from the point
10 in time in which the database had been created were entered. And not
11 only the investigations that were very complex in nature like attacks
12 with several violations but also individual cases. They were all entered
13 into the database. The cases -- each case had a number, and there was a
14 whole system of numbering for organising the information, the different
15 pages depending on the victims, the witnesses, the aggressors, the
16 monitoring of each case, et cetera.

17 Q. Thank you. But would I be right in saying that, well, the
18 products of your mission, 24th of March to the 6th of April, that focus
19 mission, we'd find that, the product of that mission, contained on the
20 Excel spreadsheet?

21 A. Yes, indeed. The interviews are listed or contained in the Excel
22 spreadsheet, the interviews with victims and witnesses. The more general
23 interviews were not for the file. For example, if we'd had interviews
24 with representatives from the UN or from church representatives.

25 Q. Now, you spoke a moment ago and yesterday of about

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 54

1 400 interviews, and I'm assuming that relates as product of that mission.

2 How many of those interviews did you yourself conduct? Very

3 approximately, even in percentage terms.

4 A. In the Excel spreadsheet, we also entered the names of persons

5 who conducted the interviews, and so this was a kind of follow-up system.

6 It's hard to say. Maybe about 30, 35 per cent that I did myself, but

7 it's really hard for me to -- to estimate.

8 Q. About -- about a third you feel is probably about right.

9 Now, interviews. When you interviewed Dark, did you make a
10 statement?

11 A. What does that mean to take a statement? Do you mean to take
12 notes or to make a legal statement?

13 Q. Well, when you made -- when you met Dark, you didn't take a
14 statement from him. I appreciate that. So what record did you have?
15 Did you take notes? Did you make a statement yourself, as it were,
16 noting the interview, a record of interview? Like we have -- we see
17 investigators' reports, for example, quite commonly in this case, written
18 in the first person by the party who's conducted an interview which
19 didn't lead to a statement being taken. What was your practice? And
20 what happened in this particular case with Dark?

21 A. I took down notes.

22 Q. Were those contemporaneous notes, or was it a note you made
23 later, and, if so, how long later?

24 A. In this kind of situation when you go to a place that is under
25 the orders of the occupying forces and there are still a lot of

1 sensitivities and - how can I put this? - the situation is still quite
2 electric, as I said, I did not say to Dark that I was there to undertake
3 an investigation as such. So for me, it wasn't good for the interests of
4 the investigation to take down a notebook and jot down my notes, so I
5 wrote things down once we had returned to Bunia. But my questions were
6 very specifically focused on the Bogoro attack, albeit not too detailed
7 for one very simple reason, and that is that I did not want to appear as
8 though I was someone who was there to interrogate him.

9 Q. Your answer's, as I understand it, obviously you didn't keep a
10 note for the reasons you've explained, but you made a note when you got
11 back to Bunia that day or the day or two afterwards. Would that be
12 right?

13 A. Yes. It would be that day there. We really tried to make our
14 notes on the same day so as not to have any memory lapses afterwards.

15 Q. Now, that note would then be put on the Excel spreadsheet. Would
16 that be right?

17 A. The interviews, apart from those of victims and witnesses, were
18 kept as interview notes, because it wasn't really detailed information
19 that was destined for the spreadsheet. The spreadsheet was more for
20 detailed information from victims and witnesses, descriptions of alleged
21 perpetrators, but this kind of interview resulted in notes for the file
22 which were kept under the same heading for the same case.

23 Q. (* Microphone not activated) ... Excel spreadsheet?

24 A. No, they are not.

25 Q. And -- and so where are they? I don't know. Maybe we can go

1 into English. I can see it bubbling out of you.

2 A. No, because the question was in English, and I found myself
3 automatically responding in English. Well, naturally each investigation
4 was entered into the computer, and there was a heading for the case, and
5 there was a special investigation, and we would have the Excel
6 spreadsheet. But there were many other documents as well providing
7 information about political affairs, information about humanitarian
8 affairs, and also there was a file or a heading containing interviews
9 that we had conducted, and all of this was done with MONUC. As for the
10 notebook in which I made my notes, I left them all with MONUC, because I
11 felt that that belonged to the United Nations. I did not take it with me
12 when I left, these notebooks where I had jotted down my notes.

13 Q. So your notes aren't part of this exercise you referred to
14 yesterday where you got rid of paper by putting things onto computers,
15 scanning things in or entering things onto spreadsheets or computers and
16 databases, allowing you to dump the paper. That didn't happen here. So
17 as far as you know, your notebook with your notes of this conversation
18 existed at some point when you left MONUC. Presumably we know you left
19 MONUC in 2006, as I understand it, having done your work there, 2002,
20 2006. As far as you know, those notebooks should be extant and somewhere
21 if someone can find them, and in that notebook should be your
22 recollection of the conversation that you had with Dark on the 26th of
23 March, 2003, in Bogoro. That's correct. I see you nodding.

24 So am I right in saying this: That when you came to make your
25 statement in 2009 to the Prosecutor here, you weren't in a position to

1 rely on any note, a near relatively contemporaneous note that you had
2 made of that conversation? You were having to go from memory. That's
3 obviously the case, isn't it?

4 A. Yes. Like many of the answers that I give here today, it was
5 relying on my memory. I'm not able to tell you exactly which notebooks
6 remained behind, and I don't remember which ones I might have destroyed,
7 but there are some which remain behind because I left them with the
8 MONUC. I repeat, they were individual questionnaires that we used when
9 we held interviews with the victims and witnesses, and we destroyed,
10 above all, those questionnaire sheets for the safety of the people
11 involved.

12 Q. Yes, but more particularly when you came to make your statement
13 in 2009, you had no -- you did not have the assistance of any note that
14 you'd made seven years earlier, six years earlier. You had no note of
15 the exact way in which that conversation took place. That would be fair.

16 A. I didn't have my notes, but I did have the report, and what I do
17 remember very well is that what was written in that report was what I
18 considered important *vis-a-vis* civilians, and -- and concerning the role
19 of Commander Dark. It was drafted, as I said, a month or a month and a
20 half after the events, and so I had that report in front of me at the
21 time.

22 Q. And we'll revisit that shortly. Now, again I appreciate because
23 it's -- you've only been to Bogoro on that occasion and passed through on
24 another occasion. It's probably difficult for you to recall. I'm going
25 to show you, if I may, a map that we use of Bogoro. If you look at it

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 58

1 and it doesn't make any particular sense to you, please say so, because I
2 will understand, particularly being presented with a sketch or a plan in
3 court of a place you little visited, it's not always easy. I've got a
4 hard copy here which I'll pass up to you, and I think this has got an EVD
5 number so we've seen it before. It's EVD-D02-00091, and it's the one
6 we're all familiar with. And you may find it easier to look at the hard
7 copy I'm passing up rather than the screen. And -- it's a public
8 document.

9 PRESIDING JUDGE COTTE: (Interpretation) We shall have that
10 displayed on the OHP and also on the screen before the witness so she
11 could use it more comfortably.

12 Court Officer, please tell us which button we need to press in
13 order to view it.

14 COURT OFFICER: (* Microphone not activated)

15 MR. HOOPER: Sorry. EVD-D02-00091. Oh, I'm sorry. I'm told
16 it's EVD-OTP-00091.

17 PRESIDING JUDGE COTTE: (Interpretation) Ninety-one doesn't seem
18 to correspond. I'm wondering if it wouldn't be 51, because the e-mail
19 from the 6th of December from the Defence team of Germain Katanga
20 mentions a sketch of Bogoro, and this was identified EVD-OTP-00051.

21 MR. HOOPER: (* Previous translation continues) ... 51. Sorry.

22 COURT OFFICER: (Interpretation) To view the document, please
23 press "PC 1" on your console.

24 MR. HOOPER:

25 Q. All right. So you can see I'd be a disaster for your database,

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 59

1 but I think we've got it now. But you've got the hard copy. Have you
2 got the hard copy?

3 PRESIDING JUDGE COTTE: (Interpretation) It is not yet on the
4 screen. Oh, here it is.

5 The accused, are you able to see it? Very well.

6 Well, then, the witness has it both in hard copy and on the
7 screen.

8 Counsel Hooper, you may proceed.

9 MR. HOOPER: All right.

10 Q. And have you got it on your screen, Ms. Bakar? No. It hasn't
11 come yet. Is it there? All right. Now, let me just --

12 A. Yes.

13 Q. It's not orientated, this plan, north/south, but east/west, as it
14 were. So if you look at it, at the top, obviously, we've got the road
15 coming from Bunia which is the road that you would have been on to come
16 into Bogoro, and then if you go past these little squares that indicate
17 housing, but I'm not -- I don't think it's suggested they are exact, so
18 don't worry about that aspect. You'll see marked in yellow halfway down
19 the page is the site of the UPC camp and the Bogoro Institute, and then
20 just there, the road you can turn off, and if you go, as it were, to the
21 right of the map, you go down the hill towards Kasenyi and Lac Albert.
22 If you continue straight down to the bottom of the map, you're on the
23 Geti road.

24 Now, we know that you came from Bunia with your group. You told
25 us you were, as I understand it, with heavily armed Ugandan soldiers, two

1 carloads, and can you recall approximately how far you got into Bogoro
2 looking at this sketch plan? Can you help us in relation to that plan
3 how far you got?

4 A. We went as far as the place where there was the military camp or
5 the school, but, however, the school was slightly uphill, and
6 Commander Dark was on the right with his people. He was on the right,
7 and there was a tree, and they brought some chairs for us, and we sat
8 down in front of the tree to talk. So we stopped at that point there.
9 And from there we wanted to go and see the school, but we were refused
10 access to the school. We wanted to walk up to the left and the right and
11 get a little bit inside, but that also was denied us.

12 Q. Now, it would be fair to say that Commander Dark, for his part,
13 didn't give you a reason. That's right, isn't it?

14 A. No. I don't recall. I don't think that he gave us a reason. I
15 don't think, but I repeat, I cannot recall perfectly.

16 Q. Again, I appreciate this is many years ago, so please don't feel
17 a criticism implied in those questions.

18 Now, the UPDF, the Ugandan army, my information is that they'd
19 been, in fact, in Bogoro since early March, that they had a company
20 there. Are you aware of that, if that's the case?

21 A. I do not know personally if this was indeed the case.

22 Q. I'm led to understand that on this sketch in front of you, you're
23 more or less at a place we know very well as the roundabout,
24 because there's a -- whether there was a roundabout there when you were
25 there, I don't know, but it's where the road forks off to the left and

1 you can go down to Kasenyi. And a little way down that road, a few
2 hundred metres, is a place called the Athena school, and I understand,
3 and I may be wrong, but I understand there was a company of UPDF by --
4 certainly by the time of your visit there, a company being a hundred men,
5 of course. So they'd taken up a position in Bogoro.

6 Now, I think you've already answered the question I'm going to
7 ask, but let me ask it again. If that was the case, if the UPDF were
8 there, am I right in saying that you had no idea of that? Your escort
9 didn't tell you, for example.

10 A. Our escort did not tell us that, and neither do I recall having
11 seen any UPDF at that place where we were.

12 Q. Now, we know you were there just over half an hour, 45 minutes or
13 so. Your recollection seems to be that the Ugandans with you were rather
14 nervous about staying there. They wanted to get out and go back to
15 Bunia. Is that right? Is that the impression you had?

16 A. That is correct.

17 Q. And that having arrived, the Ugandans, the escort with you, or
18 some of them -- or let's just pause there. I presume that the escort had
19 an officer in charge, a captain or some such rank. Would that be the
20 position?

21 A. That is correct.

22 Q. And when you arrive, what's the position? Does -- does he go off
23 and find -- disappear and then come back with Dark, or was Dark already
24 there, sat by the side of the road? Again, I know it's seven years ago,
25 but can you remember how things unfolded?

1 A. It was the Ugandan commander who went and discussed with Dark
2 even before we stepped out of our civilian vehicles, civilian vehicles of
3 the United Nations.

4 Q. And then after a time he comes with Dark, and your recollection
5 is -- who introduces him as Dark to you or -- I mean, what -- again, I
6 know it's a long time ago. Was it -- did someone say, "We are going to
7 bring Commander Dark," or did Dark arrive and say, you know, "Good
8 morning, I'm Commander Dark," or did the escort say, "This is
9 Commander Dark"? Or maybe over such a long time you can't remember
10 exactly how -- how it went.

11 A. I do not remember whether or not it was Commander Dark who
12 introduced himself as Commander Dark. If I remember correctly, we
13 stepped out of the vehicle. We moved close, went towards the right where
14 soldiers were standing, where militiamen were standing with someone who
15 was introduced to us as Commander Dark. It is more probable that it was
16 the Ugandan commander.

17 Q. Now, I'm looking at your statement at paragraph 39 where you say
18 that -- of Commander Dark, you provide a description, and you say of him:
19 "He was of medium height, thin, not very old, about 30 or 35. He
20 did not have a beard nor a moustache."

21 So this thing of a beard or a moustache, obviously something that
22 when you came to make your note was of significance to you, which puzzles
23 me, because this man has a beard. Now, I'm going to show you a video,
24 and I'm going to ask you to look at it, with a beard, and then let me
25 have your response as to whether that's the man or whether it was someone

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 63

1 else.

2 MR. HOOPER: This is a video that's previously been shown. I
3 think it will only take, I hope, several seconds to play.

4 We've got to do something here. So what we want played is
5 DRC-OTP-1017-1482-EX06 (EVD-OTP-00173) from 2:00 to 2:30, without sound,
6 and it's a public document. And we wait with bated breath to see if that
7 happens.

8 COURT OFFICER: (Interpretation) To view this video excerpt,
9 please press the button "PC 1" on your console.

10 (Video-clip played)

11 MR. HOOPER:

12 Q. I mean, if you'd like it played again, just say so. There's --
13 we can do it very easily.

14 Let me indicate before I ask that that video has been dated the
15 30th of March of 2003, and I have another video of him with a beard which
16 has been dated in March, sometime after the 6th of March, possibly about
17 the 11th of March. I don't propose to show that to you. We've seen it,
18 and I won't take up time, but there's -- that, we understand, is Dark,
19 Commander Dark, in -- in this case, and he's certainly got a beard, a
20 very striking beard, perhaps.

21 So looking at that, is that the man you saw, or do you think you
22 saw another man?

23 A. I do not remember the face correctly, but he was introduced to me
24 as Dark. As far as I can recollect, I do not remember that he had a
25 beard. But just looking at this image, I cannot tell you whether or not

1 this is the individual, because I saw this person only for 40 minutes,
2 and as I said earlier, these things happened seven years ago, and he was
3 introduced to me as Commander Dark.

4 Q. You see, in -- in your statement, you say, I'll say it again:

5 "Medium height, thin, not very old, about 30, 35. He didn't
6 have a beard nor a moustache."

7 So you've made a particular point of that. Now, this man clearly
8 has, I suggest, a striking beard. Not --

9 A. (* No interpretation)

10 Q. Yeah. And you would -- not one to miss. So I'm puzzled. I'm
11 wondering, if that's Dark, maybe you met somebody else and that there was
12 some mistake perhaps on the part of the Ugandan person who was nervous,
13 apparently, to leave anyway, that there was perhaps a misunderstanding on
14 your part. But you can see my difficulty looking at that and your
15 description.

16 A. Yes.

17 Q. And I appreciate you have difficulty many years later placing a
18 face. So let me put it like this: If this man on that image is
19 Commander Dark, and if he had a beard on the 26th of March when you went
20 to Bogoro, then I suggest it would be unlikely that the man you met was
21 Commander Dark.

22 A. Well, it's a question of memory with respect to the beard, but
23 the introductions were done in front of Commander Dark, and it was
24 Commander Dark himself who said that he was, at that point in time when
25 we visited Bogoro, responsible for Bogoro.

1 With respect to the beard, you're right. As far as I can
2 remember, he did not have a beard. For the rest, I'm sure I'm not very
3 far from the truth.

4 Q. Now, can I -- I think you've said that your only record, really,
5 that you had when you came to make your statement that you had, is -- is
6 in the -- this first report that we've just been looking at. So can I
7 just take you to the relevant paragraph here, and I'll read it out. It's
8 paragraph 68 on page 16 to 17 of the report DRC-OTP-152-0286, the report
9 at 0289, public document, looking at paragraph 68. It's in English.
10 Obviously that presents no difficulty.

11 Do you draft in English, by the way, or do you draft in French,
12 as a matter of interest?

13 A. These reports were drafted in English. I also draft in English.

14 Q. Congratulations. Right. So -- right. Let me read it:

15 "On the 26th of March, 2003, the special investigation team
16 travelled to Bogoro under the escort of heavily armed Ugandan soldiers.
17 The Lendu armed groups were the only inhabitants of the location. The
18 commander of the group, Commander Dark, after a long discussion with the
19 team, refused to grant permission to visit the place. According to the
20 Ugandan officials, the reason for his refusal was the existence of
21 unburied bodies in the vicinity of the local school.

22 The team also asked about the Hema family of six members with one
23 woman and two children who had been stopped and arrested by the Lendu
24 soldiers a few days before. Commander Dark told the team that they'd
25 been arrested because they were in possession of a letter written in Hema

1 for the Hema community. He promised to release them very shortly.
2 However, MONUC was informed later that two weeks after the arrest, the
3 driver and the car were released, but the members of the Hema family were
4 all killed. Commander Dark stated to the team that he was under the
5 command of Commander Germain, the officer in charge of military
6 operations in the south of Bunia."

7 You then go on, as we can see, to describe another aspect of the
8 investigation.

9 So that paragraph deals and is the only paragraph that deals with
10 the investigation team's visit to Bogoro; is that right?

11 A. Yes, that's right.

12 Q. And it appears in the same terms in the Security Council report
13 of 2004; is that right?

14 A. Yes.

15 Q. So as I understand it, when you came to make your statement, this
16 was the only, I say contemporaneous -- relatively contemporaneous record
17 that you had access to in terms of the visit to Bogoro; is that right?

18 A. Yes, that is right.

19 Q. Now, this decision whether you wandered around or not, you say in
20 the report that Ugandan officials had suggested that it was because there
21 were unburied bodies at the school.

22 When you say "Ugandan officials," which officials are you
23 referring to?

24 A. It was commander who was with us. Of course, these comments were
25 not made in front of Commander Dark. They were made later on. Once

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 67

1 more, I cannot tell you at what point in time we had this discussion on
2 the reasons why the commander did not allow us to visit the premises.

3 Q. All right. Right. So that -- when you say "official," it was
4 perhaps the ranking officer, the captain, whatever he was, who was in
5 charge of the escort who -- who put this suggestion forward.

6 Now, the CIVPOL report you were a trifle disdainful of yesterday
7 because its language is -- lacks your diplomatic finesse, if I can put it
8 like it. We can see that. But can I take you to -- you have it in front
9 of you and I'm referring to DRC-OTP-0202-0785, and looking at it, this
10 seems to have been a report made independently of you but by the
11 UN police. And if we look at the first page, we can see that they --
12 he's referring to members of the commission. Do you see that in the
13 fourth paragraph? "*Conformément*" it starts, and he refers to members of
14 a commission, but the context, it's plain that he's talking about your
15 team, isn't he? He's talking about the investigatory team, though he's
16 giving it a different label, and he's also quite clearly talking about
17 the visit that you made on the 26th of March to Bogoro. So he's with you
18 on this Bogoro mission of the 26th of March. Is that right?

19 A. No. As far as I'm concerned, if my memory's correct, he was not
20 with us. He stayed behind in Bogoro in order to discuss with the victims
21 and witnesses, to start organising with the others.

22 Q. Well, who was the policeman with you?

23 A. I did not say he was a policeman. He was a soldier. A military
24 observer.

25 Q. Well, just looking at paragraph 33, you say (* Microphone not

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 68

1 activated) "-- team composed of four to six people. With me was the
2 Kenyan soldier who could interpret, two military observers, the Ugandan
3 escort, Christine, et cetera, the child protection officer, the UN
4 policeman."

5 So when you made your statement last year, you do have CIVPOL
6 there. It's paragraph 33.

7 A. Those were the members of the team who went to carry out the
8 investigation in Bogoro and Mandro, not those who went to Bogoro.

9 Q. Well, it reads very clearly at paragraph 33 -- excuse me a
10 moment.

11 You've talked to the composition of your -- your team, and when
12 you come to talking of Bogoro, you say:

13 "We went to Bogoro," and then you go, "The investigation team was
14 composed," and then you say, "With me was Kenyan soldier to interpret,
15 two military observers, Ugandan escort, child protection officer, UN
16 policeman."

17 PRESIDING JUDGE COTTE: (Interpretation) Yes, Madam Prosecutor.

18 THE WITNESS: (Interpretation) Can I see the statement?

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor.

20 THE INTERPRETER: Overlapping speakers. Overlapping speakers.

21 PRESIDING JUDGE COTTE: (Interpretation) We are going to give
22 the witness a copy of the statement so she can read the paragraph 33 that
23 Mr. Hooper was referring to. We give her the document and she will read
24 that paragraph herself very calmly.

25 Usher, do you have this document which is the statement of

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 69

1 August 2009, page 7, paragraph 33? I cannot give my copy because it is
2 annotated.

3 MR. HOOPER: (* Previous translation continues) ... and I've
4 misled the witness.

5 Q. You're right. Let me correct it. In the French it's plain
6 that:

7 "With me was a Kenyan military, two military observers, Ugandan
8 escort." Which I omitted. And then you carry on here: "Christine, and
9 the United Nations policeman, and an officer of the high commission for
10 the rights of man, and the other military Kenyan stayed in Bunia."

11 So my apologies. So let me quickly step away from that point.

12 PRESIDING JUDGE COTTE: (Interpretation) If there is any need
13 for this, I have a second copy which has not been annotated. So if the
14 witness has any need for this document, then she can make use of my copy.

15 MR. HOOPER: (* Previous translation continues) ... working off
16 the French so that was my mistake. I'm sorry.

17 Q. So, yes. So, right. So you don't have CIVPOL with you. Now,
18 understanding that, nevertheless, what is of interest here in this report
19 for me, which I'd like to draw your attention to, is if we turn to the
20 page DRC-OTP-0202-0788, which I think is page 4, top of the page the
21 words are "*les preuves testimoniales*," and I'm looking at the second
22 paragraph where they're talking of the killings of the 24th of February,
23 2003, at Bogoro. And I'm not going to read my translation. You can see
24 what's written there in French. We can all see that. And it's clear
25 that there's reference there -- that what it's saying is that because of

1 information relating to the presence of mines at Bogoro, it wasn't
2 possible for the commission to investigate the existence of mass graves.

3 And my question is: Can you remember anything being said to you
4 along those lines, that there was a problem with mines at Bogoro?

5 A. There was a problem with mines in certain areas, but I do not
6 remember of any problems with mines in Bogoro. I do not remember. But I
7 would like to add that CIVPOL was not with us in Bogoro. There is a lot
8 of hearsay in this report, I must say.

9 Q. We heard later that there were mines found in Bogoro, but you
10 never heard of mines; is that right?

11 A. On that particular visit I do not remember having heard any
12 mention of mines, on that particular occasion. We were not really
13 responsible for mine issues, except when the soldiers talked about this.
14 In fact, it only related to comments or observations made by the
15 military.

16 Q. Now, obviously during that meeting you'd done your best to try
17 and win back these -- this family of Hema who you understood had been
18 taken prisoner. Later, you say that you heard, some two weeks later,
19 that they'd been killed. Do you know who told you that?

20 A. It was the members of a civil society organisation working in
21 Bunia.

22 Q. Was it someone called Kisangani?

23 A. I do not have any recollection of that name, but I don't believe
24 that it was somebody who went by the name of Kisangani. I do not know
25 that name.

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 71

1 Q. Now, having returned from Bogoro, your focus is then on meeting
2 survivors and victims, and I see at paragraph 56 you met -- as I
3 understand it, you conducted about a hundred interviews. Is that right?
4 On that subject of Bogoro?

5 A. That's right. Not only me but the team.

6 Q. Understood. And at paragraph 56 you say:

7 "The witnesses were not able to give the name of the commanders
8 or those responsible for the attacks."

9 And is that right?

10 A. That is right.

11 Q. Now, in terms of other material that you may have gleaned from
12 people, I'm going to look at paragraph 69 of that first report, the one
13 we just looked at concerning the visit to Bogoro. It's the next -- the
14 next paragraph when you are summarising this issue of the witnesses,
15 and -- and you say that you -- by the -- you -- you get the names of
16 330 victims killed or missing, and I understand it breaks down into
17 260 who are killed and 70 missing, of whom 173 are under age. That's in
18 quotes, "under age."

19 Now, we've had the benefit of a review of those who are victims
20 and killed made by the -- made by someone we all know and I won't mention
21 because it will, perhaps, reveal his identity, but he was someone in a
22 position of authority in the village and spent a long time accessing
23 information from people over a number of years and has had the benefit of
24 the reflection of the last seven years, too, and we got a figure of dead
25 just a little short of 150. About 147, 148. And I'm thinking of that

1 figure, and I'm looking at your figure, and there is, obviously, a
2 significant difference, almost a hundred per cent.

3 Again, not a criticism because of the -- what -- the
4 circumstances you're working in, but would you, for your part, be willing
5 to accept today that the number, in fact, was significantly less than the
6 number you gleaned from these various interviews? Not just you, but
7 colleagues as well. That the mathematics may not be a true reflection
8 for whatever reason?

9 A. We compiled this figure with the names that were given to us by
10 survivors and eyewitnesses. We did not go asking administrators, for
11 example, how many people were killed, because in the past what we
12 discovered was that our figures were usually smaller than the figures
13 given by the heads of the villages that were attacked.

14 That is the list we were able to compile with the names that were
15 provided to us by the persons we interviewed.

16 Q. All right. So you would be happy to accept that it may not
17 reflect the true figure, indeed does not.

18 A. It could be that certain names were invented. I do not know
19 what -- for what reason, but 150 or 300, we applied the same methods.

20 Q. All right. Now, I'm looking at paragraph 69, and the generality
21 of what's there, I think, probably most people would accept reflects
22 evidence we've heard, but there's one aspect here. Can I ask you this:
23 You're talking about -- this is a -- seven lines down. I'll read it and
24 then come back to you.

25 "The aggressors were reportedly forced to withdraw from the city,

1 but stated that they would return with reinforcements from government and
2 APC forces. They reportedly returned around 10.30."

3 And then that's when the resistance in Bogoro collapses.

4 How many people gave you that account of the aggressors being
5 pushed back and saying they were going to get the reinforcements of APC,
6 et cetera, government and APC, and then coming back in that way? How
7 many people gave you that account of the battle?

8 A. I do not remember, but as I said, this was reported to us. I do
9 not remember how many people reported this. Other people said that there
10 were also Ugandans. I do not remember the number.

11 Q. No, but would it be a significant number to find its way into
12 the -- into the *précis* of your summary, or could it be one person said
13 this and it found its way into the summary?

14 A. Usually if it was one single person it would not appear in the
15 report. Perhaps there were several people, but once again, I do not
16 recall. Because for us it is important when several people say that
17 there were other forces present.

18 Q. All right. Thank you very much. Now, you met Germain Katanga,
19 who I represent, in 2005, by which time he was detained in Kinshasa
20 prison. You went to visit him there. You may have touched on this, but
21 I'm right in saying you didn't discuss Bogoro with him on that visit?

22 A. No. The purpose of that visit was not to talk about cases.

23 Q. Can you recall when you first learnt that Germain Katanga was a
24 target of the OTP here?

25 A. I do not really remember.

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 74

1 Q. All right. I now want to come, if I may, to the Security Council
2 report, and again this is a document, as I understand it, largely drafted
3 by you and polished up in New York. Is that the essential position?

4 A. That is correct.

5 Q. I don't want to take a lot of time up on this, and I'm still
6 optimistic that we'll finish by -- by half past when we rise for the day.
7 So you haven't got more than 25 minutes left in that chair today, so --
8 but you've got it in front of you, so I'll go through it quite quickly.

9 Incidentally, would this report also be in French? I think it
10 probably is. It is. All right. So ...

11 Now, there's the summary -- oh, I'm sorry.

12 PRESIDING JUDGE COTTE: (Interpretation) You have the floor,
13 Madam Prosecutor.

14 MS. DARQUES-LANE: (Interpretation) Just a clarification,
15 your Honour. We do have the copy of this document in French if you would
16 like to hand it out.

17 PRESIDING JUDGE COTTE: (Interpretation) All right. Could you
18 hand a copy in French to the witness, who will then have a copy in
19 English and in French. I will not ask those who want it in French to
20 raise their hands, but I personally would quite like a copy, and I see
21 that there is an enthusiastic movement to my right.

22 MS. DARQUES-LANE: (Interpretation) Well, I'm very pleased to
23 see that I'm going to make some people happy.

24 MR. HOOPER: (* Previous translation continues) ... given --
25 anyway. All right.

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 75

1 PRESIDING JUDGE COTTE: (Interpretation) That will enable us to
2 ensure that we correctly translate the English, Mr. Hooper.

3 You may go ahead, Mr. Hooper.

4 MR. HOOPER:

5 Q. So the -- I'm -- paragraphs now, I'm looking at paragraphs
6 1 to -- to 34. Have a quick glance at those. It will be a very quick
7 glance, but you can see what it is. It's a -- quite an extensive
8 history -- or a history, one should fairly say, a history of -- of
9 events.

10 Can you provide your sources for this?

11 A. For the general part, there were a lot of reports that had
12 already been written by the various MONUC services and also other reports
13 that had been written by NGOs. Furthermore, we say in the report itself
14 that certain cases were not investigated by us, but, rather, by an
15 international NGO. That is also why the entire political part was
16 reviewed by our colleagues from political affairs. It is also based on
17 discussions that we had with several figures in Ituri and also in
18 Kinshasa who knew Ituri well.

19 Q. So would it be fair to say that this portion of the report is
20 essentially based on others' work?

21 A. Other than the parts that relate to the investigations that we
22 carried out ourselves and also the interviews that we carried out
23 ourselves with certain figures from civil society, certain politicians,
24 and various researchers and professors in certain parts of Ituri.

25 Q. All right. Now, I'm just going to, as I say, go quickly through

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 76

1 some aspects of this, and the first page -- paragraph -- it's a
2 paragraph, isn't it. So paragraph 2. And you're talking about abuses,
3 and you say:

4 "They've been carried out with total impunity by all Ituri armed
5 groups and several non-Ituri groups (MLC, RCD, RCD-ML, RCDN)."

6 And then you say this:

7 "In addition, the pre-transition government in Kinshasa, and the
8 governments of Rwanda and Uganda, all contributed to the massive abuses
9 by arming, training, and advising local armed groups at different times."

10 And did you believe that to be correct?

11 A. Excuse me. I believe that that is correct, because this emerged
12 from many reports from the United Nations, both confidential and
13 nonconfidential, and some of the victims we saw, even if we were not
14 seeing them to talk about earlier cases, also reported cases where they
15 had been victims of various attacks. For example, as I said, where there
16 were also RCD-ML, for example. In Nyankunde, MLC, we were there
17 ourselves. In Mambasa and other cases that were much older where these
18 armed groups received the support of the countries that are mentioned
19 here.

20 Q. Now, over the page, at page 5, there's a footnote, and I'm
21 interested in the footnote, and I'll read it:

22 "Ugandan authorities alternately supported and provided weapons
23 to RCD-ML, MLC, RCDN, UPC, PUSIC, FNI, and FAPC."

24 And I note the absence of the FRPI in that footnote.

25 A. Yes. That this is also a result of the political analyses of our

1 colleagues. You don't see the FNPI (* as interpreted), it is true, and
2 at certain times it was not clear what the division between FNI and FRPI
3 was, and I don't remember on what exact date the FRPI was established,
4 for example. I think that it was a little later than the FNI. But it is
5 true that the FRPI does not appear in this footnote.

6 Q. And I'm in agreement with that. Now, again on that page, at
7 paragraph 5, you talk about the Hema militia, the UPC taking over Bunia,
8 and I'll pick it up from there:

9 "First in August 2002, and again in May 2003. They adopted a
10 ethnic cleansing policy to empty the town of its Lendu and Bira
11 populations as well as the non-Ituri and Nande community, which was a
12 commercial rival to the Hema businessmen."

13 And then:

14 "Hundreds of Lendu villages were completely destroyed during
15 attacks by Ugandan army helicopters together with Hema militia on the
16 ground."

17 And again, that's there because you believe it to be true; is
18 that right?

19 A. I think it is true, even if I did not conduct these
20 investigations, but we did meet a lot of Lendu who had lost family
21 members in these attacks. And we ourselves visited certain Lendu
22 villages that had been completely destroyed.

23 Q. Now I want to go to paragraph 21. I've got about five
24 paragraphs, just to indicate. I've got not very much more to go.

25 Paragraph 21. I'll read it all.

1 "The collectivity of Walendu-Tatsi, where the Hema and Lendu
2 communities were living in peace, became involved in the conflict only
3 late in 2001. In 2002, important Hema South families were reportedly
4 involved in financing the involvement of UPDF in attacking the
5 collectivity of Walendu-Bindi, the only --" that's Ngiti, isn't it, a
6 spelling mistake, "Ngiti collectivity located in Irumu territory.
7 Hundreds of localities were destroyed by UPDF and the Hema South
8 militias. Meanwhile, the Lendu were organising themselves into armed
9 groups to take revenge. The Ugandan military trained thousands of Hema
10 youth in Ituri and in Uganda. After 2002, others were reportedly trained
11 in Rwanda. However, the Hema militiamen were not the only ones to carry
12 weapons. In some Hema localities, such as Mandro and Bogoro, each family
13 was reportedly given weapons to defend itself. This was one of the
14 reasons given by Lendu combatants to justify the massacre of civilians
15 suspected of carrying weapons."

16 So just pausing there. That quote that the Hema militiamen,
17 that's the UPC, were not the only ones to carry weapons but in some Hema
18 localities such as Mandro and Bogoro, each family was reportedly given
19 weapons to defend itself, can you recall what your source was for that
20 statement "each family," for example, in Bogoro/Mandro, was reportedly
21 given weapons to defend itself? Can you recall your source for that?

22 A. I do not remember the sources and I would say very clearly that
23 this was reported to us by certain people, but I do not remember who
24 reported it to us. Already our colleagues from political affairs, our
25 military colleagues, said that in certain villages, families also were

1 receiving weapons.

2 Q. Now, if we turn to paragraph 27, we now come to some specific
3 paragraphs relating to the role of outside parties, dealing first of all
4 with the role of Uganda at paragraph 27. You talk there of the rather
5 specious claims that were made to justify their presence and then point
6 out that they were creating almost all of the armed groups, training the
7 their militias, sometimes even in Uganda, selling weapons, lending their
8 soldiers to rich Hema to massacre Lendu civilians and destroy villages in
9 Walendu-Tatsi, which is to the north, of course, in 1999. You say UPDF
10 also carried out widespread bombing and destruction of hundreds of
11 villages from 2000 to 2002 in the Lendu Ngiti collectivities of
12 Walendu-Pitsi and Walendu-Bindi.

13 And then in the rest of that paragraph you name captains and
14 colonels, I'm not going to repeat all those names, who were Ugandan
15 sector commanders sent to Ituri of whom only two left without serious
16 allegations against them.

17 So this report not only speaks of significant crimes, state
18 sponsored, but actually names names, doesn't it, of those most
19 responsible as commanders?

20 A. Yes.

21 Q. And then dropping to paragraph 29, the role of Rwanda, it speaks
22 of the role of the Chief of Staff of the Rwandan army, James Kabarebe
23 Kagunda:

24 "Was reportedly the biggest advocate of Rwandan support to Hema
25 militias and was in contact Chief Kahwa, who negotiated the arms supplies

1 in June 2002. Rwanda reportedly supplied arms by air drop to UPC camps
2 located in Mandro, Tchomia, Bule, and other places, and sent military
3 experts to train Hema militias, including child soldiers. Moreover, some
4 UPC elements estimated at 150 went for training in Rwanda from September
5 to December 2002."

6 And later, as we see further down that paragraph, MONUC believes
7 that Rwandan nationals occupied posts in UPC -- no, start again.
8 Practically all witnesses interviewed by MONUC believe that Rwandan
9 nationals occupied posts in UPC military commands, and some further
10 sources of that material. That -- that's -- that was believed to be
11 correct, obviously, to make its way into a Security Council report.

12 A. This information was not just reported to us, once again I
13 repeat, in particular with regard to the roles of the Ugandans and the
14 Rwandans. This was by colleagues from political and military analysis,
15 but we ourselves, when we talked with people, were given the same kinds
16 of information.

17 Q. And finally on that situation, paragraph 30 deals with the role
18 of the Kinshasa government, mid paragraph:

19 "Early in 2002, the involvement of the Kinshasa government
20 centred on military assistance that it provided to the RCD-ML in Beni.
21 Kinshasa sent trainers, weapons, and also some military elements
22 allegedly amounting to four battalions in support of the APC, which
23 reportedly were sending weapons' supplies from Beni to Lendu militia.
24 And it's alleged," the last sentence, "that in the last three months of
25 2002, some military supplies may also have been sent directly to the

Witness: Witness DRC-OTP-P-0317 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 81

1 Lendu militia, notably to Reti in Djugu territory."

2 Again, that was presumably information available to your
3 colleagues. Is that right?

4 A. Yes. Except that once again this is information given to our
5 colleagues. That's why we say "reportedly."

6 Q. And I've got two paragraphs to go. I hope I can fit them in.
7 Maybe not.

8 PRESIDING JUDGE COTTE: (Interpretation) I think it would be
9 prudent to continue tomorrow, because we only have four minutes, barely
10 five minutes remaining.

11 MR. HOOPER: Sorry. I'll have five minutes tomorrow. Thank you
12 very much.

13 PRESIDING JUDGE COTTE: (Interpretation) I apologise,
14 Mr. Hooper.

15 Witness, the Court -- the Court Officer is going to take
16 advantage of the remaining few minutes to ask a question about the video.
17 Is that not correct, Court Officer? No? No? All right. I
18 misunderstood your message.

19 Witness, we thank you.

20 THE WITNESS: (Interpretation) Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you for your
22 contribution throughout the morning's proceedings. We will see you again
23 tomorrow, apparently for the last few questions from Mr. Hooper and the
24 beginning of the cross-examination from the Defence team of
25 Mathieu Ngudjolo.

1 Usher, could you please accompany the witness out of the
2 courtroom. We'll see you tomorrow, madam.

3 (The witness stands down)

4 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, do you
5 have an idea of how long your cross-examination will take? At least if
6 I've understood correctly, you have pretty much three and a half hours
7 tomorrow as a minimum, perhaps a little more.

8 MR. FOFÉ: (Interpretation) Yes, your Honour. I think that we
9 will finish tomorrow. Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor.

11 The Chamber would like to thank everyone who has assisted it this
12 morning once again. We will now adjourn our session and we will see the
13 accused tomorrow.

14 The hearing ends at 1.27 p.m.

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